Florida Law Review

Volume 21 | Issue 5 Article 3

June 1969

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WHAT'S A NICE COUPLE LIKE YOU DOING IN WELFARE LAW ANYWAY?

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What would happen if today, as a result of a nonfault, freak accident you were suddenly horribly disabled? Perhaps suffered brain damage that made the continuation of education impossible? If you were a student from a poor family, with no savings of your own and only minimal-coverage insurance, you might find yourself personally concerned with the "Relief Establishment of the U.S.A." Even if you were already practicing law, the injury might occur during those first few years when there are many more debts than assets, and large medical bills could quickly eliminate your buffer against poverty. You might not have paid enough quarters to qualify for the relatively respectable assistance of Social Security. You would have to hope, instead, to "get on welfare" – that is, to seek help from your state categorical assistance programs or general assistance from the county.

If the reader will continue to imagine himself in that particularly bleak hypothetical, this article will explore the aid a lawyer[1] can render to the individual who is trapped in America's survival subculture – a land of brutal needs that remain largely unmet by any of the currently available programs and a land based firmly in the present where the theoretical appeal of the negative income tax is irrelevant if it will not pay last week's rent and buy today's food.

Although our illustration assumes that your brains have been scrambled, some instinct that is left from your legal training leads you to ask for legal advice. In this single fact, you are already in an elite group separate from all those countless potential welfare recipients. Unlike middle-class recipients of such government largess as farm subsidies,[2] few of the poor see the receipt or rejection of governmental benefits as a "legal matter."[3] They only come to a lawyer at a social worker's or employer's suggestion or they come about something else[4] and the welfare problem emerges during the interview. This is less true today than it was two years ago as a result of the efforts of the poverty program and welfare rights movement in educating the people in their rights, but it still generally describes the situation.

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1. *See also* Silver, *How To Handle a Welfare Case*, 4 LAW IN TRANSITION Q. 87 (1967); Sparer, *The Role of the Welfare Client's Lawyer*, 12 U.C.L.A.L. REV. 361 (1965).

2. Reich, *Social Welfare in the Public-Private State*, 114 U. PA. L. REV. 487, 489-90 (1966).

3. Briar, *Welfare From Below: Recipients' Views of the Public Welfare System*, 54 CALIF. L. REV. 370, 380 (1966).

4. Two of the most frequent implicit sources of welfare problems have been divorce-support actions and adoptions. Both are often inspired by a client's understanding or a social worker's instruction as to what must be done to qualify for welfare.

The reluctance to view welfare as an area of legal concern is still recent enough that *welfare law*, as such, reaches back only approximately three years. The rules and regulations of many of our welfare programs were developed, at least in skeletal form, more than thirty years ago during the New Deal, but the cases, the administrative interpretations, and the influx of lawyers into the process can be dated with the implementation of the Economic Opportunity Act of 1964. Some bar association legal aid attorneys were quietly and competently representing clients on welfare matters before that time, but not until Office of Economic Opportunity (OEO) lawyers attracted the court's attention was the era of the welfare lawyer upon us.

What lawyers would you turn to for advice on welfare? If, as we have propositioned, you are low enough on the economic scale to be seeking to qualify for welfare, you are doubtless without adequate funds to procure a private attorney. One might, of course, help you because of friendship or charity, but it would be like going to a tax specialist on an admiralty matter. Since little in law school has prepared most practitioners for a welfare client,[5] the lawyer's advice will, of necessity, be general rather than based on the actual statutory and regulatory law — the regulations are complex[6] and not in general circulation.[7] For instance, to our knowledge no law library in Florida has a copy of the regulations. However, there are experts in the field and their services are free to the qualified poor. The Legal Services Program (LSP) lawyers, bar association legal aid attorneys, and the soon-to-be available Health, Education, and Welfare (HEW) lawyers[8] all work in the welfare specialty. Many of these attorneys have had intensive training in welfare law[9] and have handled the hearings and cases that are the composites of the burgeoning field of welfare law.

By referral or otherwise, you, a hypothetically poor individual, have found your way to a neighborhood LSP office. Although such offices were originally quite literally *neighborhood* offices — single man, storefront offices scattered throughout a city — the present philosophy of the program emphasizes the kind of quality representation that is very difficult to achieve in a one-man, high caseload (500-800 or more cases per attorney a year) arrange-

5. This situation is changing as more law schools offer "Law and Poverty" courses and as administrative law teachers lower their sights from the SEC to welfare hearings.

6. There are state and federal regulations with almost weekly supplements to each and inadequate indexing.

7. This is not to place blame on the welfare department. Until lawyers began to appear in the "fair hearings," their single copy of the regulations in each district office was practically never consulted. Since the origin of the OEO program in Florida the welfare department has generously provided free copies and a supplemental service to each as requested.

8. Under the current proposal, HEW will require the mandatory participation of all states in providing lawyers to represent appealing welfare recipients in the hearing procedures. A voluntary program with the majority of the funds coming from the federal government would make lawyers available to welfare recipients for representation in *all* their legal problems.

9. The OEO provided regional three-day training sessions in both welfare and consumer problems in 1968.

ment.[10] Thus, you may have had to take the bus to one of the new conglomerate offices. They are still located in poverty neighborhoods, but several areas are served by a three-to-five-man team of lawyers from one office. In the larger offices better library and research facilities are provided and the lawyers can, if they employ good office management techniques, offer a much higher quality of service than before. In such an office you wait to have your first interview with the lawyer.

Actually, one might say that every person in the waiting room with you is part of the LSP lawyer's "welfare practice."[11] When you fill out the application for services, it is clear that any one who meets the financial standards set by LSP for determining qualifications must meet existent need with inadequate funds. They are then potential welfare recipients. From such a perspective, representation of the man sitting beside you facing eviction from public housing or of his son who must be before the juvenile judge in the morning is as much a "welfare case" as your own.

During the interview,[12] you are surprised to find that there is not a yes-or-no answer to your question concerning your eligibility for welfare. The lawyer dwells in detail on such things as your residence. You tell him honestly that Florida has always been your hoime. He asks you again whether you have actually *lived in the state* for five of the last nine years and whether you have lived here continuously for the last year. You are fortunate that you were away in school for only five years, which leaves you with the requisite five years residence, but the last year has involved interstate trips unsuccessfully trying to find some kind of work you are capable of performing and proof of continuous residence may be difficult. The lawyer explains that the Supreme Court of the United States has decided a case that says residence laws such as Florida's are unconstitutional.[13] He does not think the law will be a stumbling block in your case.

Further explaining that it will be necessary for you to have a doctor's certificate to the effect that you are "totally and permanently disabled" in order to qualify for the State Aid to the Disabled Program, the lawyers asks if you have a local doctor who can perform this task. You answer affirma-

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10. *See* du Fresne, *Genuflection in the Directions of Justice?*, NAT'L CLEARINGHOUSE REV. Feb. 1969.

11. Which is the philosophy that inspired the HEW voluntary legal services program discussed in note 8 *supra*.

12. In a case where application has not yet been made to the agency, it is more likely that you would be referred to a social worker or a para-legal aid. In the area of welfare, it is allowable for a nonlegally trained individual to represent the client at every stage of the proceeding up to judicial review. Although our practice is to represent our clients in "fair hearing" appeals, a nonattorney is able to do so by agency regulation.

An adequately trained individual can prepare budgets, do initial interviewing, accompany the client to welfare application rooms, and act as the client's interpreter of need to those in authority. Such training requires time and the the attention of a lawyer so that the para-legal assistant is aware of the range of rights of the client that may be violated during the administrative process.

13. Shapiro v. Thompson, 89 S. Ct. 1322 (1969).

tively but say that you have no money to pay for it. Then you interrupt the course of the interview with the matter that is uppermost in your mind — How much can you reasonably expect to receive from the state assistance? Will it allow you to live and to meet the accumulated unpaid hospital and doctor bills?

Shaking his head negatively about the old bills, the lawyer goes into the complex questions necessary to estimate a welfare budget: sources of income, amount of income, its regularity as a source, its adequacy to meet needs, the amount of unmet needs.[14] He draws up a welfare budget showing the expected amount of payment should you be found qualified for state disability assistance. Because you still have high monthly medical bills and need someone to cook for you and help take care of you, your needs far exceed the maximum grant of seventy-five dollars a month for disability assistance in Florida.[15] Your shock at the seventy-five dollar a month figure is understandable. You explain that you had expected twice that amount to meet your minimum needs — and that an uncle of yours had received four to five times that amount for years from Social Security.

While sympathizing with your disappointment, the lawyer must realistically tell you that under the present system you not only have not worked long enough to meet the Social Security qualifications, but it may be that your injury is not *permanent* in the technical sense that there may be an indefinite future possible alleviation of the condition — or the condition may not be found to disable you totally from performing all work. If either of these latter two prove true, you will not be able to receive state assistance. You will then have to turn to the county operated general assistance program,[16] which is substantially lower than the state in schedule of payments, its aid being of a temporary nature[17] and quite difficult to obtain because of limited funds.[18] The lawyer assures you he does not mean to be a harbinger of doom; it is at least fortunate that you live in one of the counties that has a viable general assistance program. Florida is among the minority of states[19]

14. This catalogue of questions is highly oversimplified. The question of "need" in and of itself is immensely time-consuming to calculate. Questions cover rent, electric and gas bills, furniture payments, special expenses, unpaid bills, telephones, other appliances, medical expenses, and care for the children.

15. The $75 maximum applies to Aid to the Disabled, Aid to the Blind, and Old Age Assistance. *See generally* FLA. STAT. ch. 409 (1967). It actually works fewer hardships than does the AFDC percentage-of-need formula by which total unmet needs are calculated and then the department pays a certain percentage. Currently, 60% is paid leaving every welfare mother in Florida to manage somehow with 40% of her family's basic needs unmet.

16. It is almost impossible to generalize about county welfare programs since each is unique. Some have written regulations, some do not. Some have budgets in excess of $1 million. (Dade County) while most have less than $25,000. Some of the poorest counties have less than $10,000 or no funds at all allocated to relief. A good general reference is COUNTY WELFARE IN FLORIDA (1966).

17. Most give aid for only a maximum of 6 months.

18. One limitation is by way of 6 months to a year county residence regulations.

19. Less than a third of the states do not have state operated general assistance programs and this figure includes *all* of the Southern States. The amount of discrimination and arbitrary action in a local program without higher supervision is notable.

that fails to provide financial backing or over-all supervision of local and county general assistance. If you lived in one of the counties that has not elected to fund a general assistance program at a level to be meaningful you would have to ask for private charity. This is the system within which we must work.

Ending the interview, you are referred to a social worker with the local poverty program who will take you to the state agency office to apply for assistance after you get the medical certificate — or get the Florida Department of Public Welfare to agree to pay for an examination and doctor's opinion. The social worker will also attempt to get some kind of emergency aid from the county[20] or a private charity for you to exist on until the state decision is made. If the state process were expedited and you were accepted immediately, it would still be, at the very least, thirty days before you received the first check.

Whatever illusions remained intact after your inverview with the poverty lawyer were thoroughly crushed during the remainder of the day. Two- and three-hour waits were necessary at each agency, followed by fantastically intricate eligibility interviews — and at the end of the day you still had no money. Like most Americans you had waited until there were no more reserves to call on before you sought help from welfare. You had exhausted any help from family and friends; you were now deeply in debt, without money for even the minimal food and shelter. You had envisioned immediate relief of your plight. Instead, hourly the situation became more involved, more exhausting, more degrading. One of the private agencies called the Salvation Army, which agreed to pay for your soup and bed.[21] Over and over again, you said to anyone who would listen, "But I'm an American citizen. Can't the Government just help me out a little?" It sounds maudlin in print but the sense of the unfairness of it "happening to me *in America*" is one of the most frequent statements voiced by those confronting the welfare system today.

At the end of the week you had been finally authorized to receive surplus commodity foods, received a card for free medical services (but not for medicines), and been told that at the end of the month you would receive a temporary grant from the county. No word had come from the state.

If we carried our hypothetical further, what kind of life could you expect? Days of waiting — waiting in line for flour, lard, raisins, and peanut butter; waiting half-days, full days to see the overworked doctors in the county hospital, waiting for buses to go to the places where the services are, waiting at your apartment to see your case worker on the day she is supposed to visit, and when she does not come that day, waiting on another day when she does come. Questions — Was that radio there when I came last time? Where did

20. Although, as lawyers, we are often frustrated by the lack of written regulations on the part of the county programs, this lack does mean that they have a flexibility that allows them to respond to emergencies.

21. This is probably the single example of an instance where it is fortunate for our hypothetical person to be a single man. There is a prevalent prejudice against giving assistance to a single man or woman under age 65.

it come from? What did it cost? Did you go to the rehabilitation classes? Did you eat the prescribed foods? Are you indigent? Are you a pauper?[22] And, just enough money to continue to survive at the emergency level. Each unexpected expense putting you into an unbearable position where money allocated for absolutely basic food and shelter would have to be applied to something else. And then you face eviction. You might meet a woman whom you wish to marry, but at your reduced station in life she may well be an Aid to Family's with Dependent Children (AFDC) mother who could not afford to marry you because in doing so she would lose her only hope of rearing her family.[23] Even if by that time you had qualified for state aid it would be impossible to rear a family on seventy-five dollars a month. It would not be a pleasant existence nor an indolent one. It is hard work just existing in our cities on a welfare budget.

There are two pinpoints of hope in this dark scene. The welfare lawyer is responsible for one; the welfare clients themselves for the other. The lawyers have moved into the courts with class actions and test cases that challenge unconstitutional welfare practices. The clients have ignored all that the sociologists have had to say about the inability to organize the alienated poor and have come together in the welfare rights movement. On invitation, poverty lawyers have acted as "house counsel" for welfare rights groups, drawing up papers of incorporation and giving advice on the legal feasibility of projects, but the impetus has come from the clients themselves. In and of itself, the national welfare rights movement is one of the most exciting prospects for future developments in welfare law because the whole concept of a poverty power group would have been inconceivable a short time ago.

One of the reasons young attorneys have been so attracted to welfare law in the last few years is the complete *newness* of it all. There is little need to look before 1966 in research on any matter in the field. Occasionally, social security, workmen's compensation, or personal injury law in earlier cases will give a useful analogy, but the core of the emerging welfare law can be found in state and lower federal court decisions of the last few years. The cases are now reaching the Supreme Court and soon there will be a body of case law from which to draw with authority. At this stage, the inequities in welfare administraton more frequently inspire the *making* of law rather than the *change* of law. So small a number of the welfare procedures and regulations have yet been examined by the courts that out of any ten welfare clients you will almost invariably find a possible case of first impression. Most of those possible cases never reach the courts, of course, because the agencies deal with them directly or in the "fair hearing" process.

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22. Every time you seek a service, you must again go through the excruciatingly humiliating eligibility questions. *See* Note, *Eligibility Determinations*, 115 U. PA. L. REV. 1307, 1339 (1967), which endorses "presumptive eligibility" and the declarative system.

23. Florida has not chosen to participate in the Aid to Families with Dependent Children-Unemployed Parents (AFDC-UP, Social Security Act §407, 42 U.S.C.A. §607, as amended) (Supp. 1969)), so if there is a husband and wife in the home it is impossible to

The opening of the hearing process[24] to a much larger portion of aggrieved recipients is an example of the joint work of the lawyers and the welfare rights groups. The lawyers' presence and willingness to represent a client who was legally entitled to a larger grant or a continuation of assistance when threatened with termination accounts for the gradual tightening of due process hearing requirements and a word of mouth acknowledgement that such appeals can be profitable. A very high percentage of the appeals taken by the OEO programs in south Florida have proved successful. When the agency decision is proved incorrect on the basis of the identical evidence that was before the initial decider, retroactive payments are granted to the time of the incorrect agency decision. A 200 dollar payment is not unusual, and the effect such a payment has on those who would normally be afraid of challenging the establishment is considerable. Also, the welfare rights movement has stressed the *right* to welfare and the *right* to redress when you are treated unfairly. This education in their rights has made many people willing to contest a change in grant that they would have accepted resignedly a short time ago.

A recent project in Florida effectively illustrates the law reform-welfare rights dovetail effect. The State Department of Welfare announced a major cut in Aid to Families with Dependent Children grants. The law reform attorneys of two LSP offices filed federal suits attacking the action as discriminatory and repugnant to the Equal Protection Clause of the Constitution and sought to enjoin the cut. When the recipients received notification of the reduction welfare mothers began calling each other, the local welfare rights organization, and their attorneys. All of these groups working together formulated a mass appeal of the department's action. Close to 500 individual appeals of the lowering of their grants were filed with the welfare department. Hearings were scheduled for groups of twenty women at a time. Each mother was afforded a full opportunity to explain why her present funds were inadequate and any further reduction would be the cause of incredible hardship. Not only did the mass appeal serve to unite these women in their demands and their sense of shared experience, but it also gave the silent a voice. Lawyers who participated in the hearings commented on the articulate, compelling testimony of the mothers and the emotional response of the other women to each one's story. A further contribution of the effort was the attention focused by the welfare recipients on the appeal process itself. Dramatically, the decisionmaking process of the agency was brought from low visibility to high. The mothers who participated in the event will not hesitate to resort to this legal instrument if the system treats them unfairly again. The mock hearings and roleplaying used as educational tools by the welfare rights organizers serve the same function. Each gives the recipient a sensation of competency in coping with the system. The importance of the welfare recipient becoming aware of his impact on the impersonal system cannot be overemphasized. Despite the fact that no single group is more

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get aid in all but the most unusual instances.

24. Every time a recipient's grant is changed or terminated he has a *right* to appeal.

desperately concerned with the outcome of a governmental bureaucracy's decisions than the recipients of welfare payments, until recently they were totally divorced from the mechanics of the system; they understood only that they stood in a position of utter dependence and that the mysterious workings of the system could literally grant or deny the means for life. Such a psychological setting could not foster eventual self-sufficiency nor human dignity.

As welfare comes to be regarded as just one more program of governmental largess, the idea that satisfaction of a statutory set of qualifications for obtaining benefits creates a right worthy of legal protection is inevitable.[25] Once such a right is admitted, the degradation enforced by our present system is indefensible.[26] Although almost all of the higher placed welfare administrators and social workers already view welfare as a right,[27] a much lower level of responsive attitude is evidenced in the laws and regulations that govern welfare. In *no* other government-funded program of benefits could you find provision for *criminal* punishment for the "*misuse* of welfare funds."[28] What would the farmer say if informed he was criminally liable for using his subsidy payment for a cocktail party rather than something the Government thought was "better"?

In the past, the difference has frequently been that those who received government benefits were among the most politically powerful: farmers, veterans, homeowners, and the transportation, publishing and mineral industries.[29] Obviously, since the politicians who designed the legislation of largess wished above all to please the benefited group, the rules surrounding the program's implementation were made as painless as possible. In contrast, welfare programs have been grudgingly enacted on a crisis-to-crisis basis when a problem portion of the population became a visible ill. If the welfare rights movement gives a recognized base of political power from which recipients can lobby, demonstrate, and bargain for new legislation in the welfare field, it will have rendered a significant service to its constituents and to the nation. Surely, it is desirable to have a representative power group for those who, because of their economic status and near disfranchised state, are

25. *See* Reich, *The New Property*, 73 YALE L.J. 733 (1964).

26. *See* Graham, *Civil Liberties in Welfare Administration*, 43 N.Y.U.L. REV. 836 (1968).

27. *Cf. id.* at 841.

28. Reich, *supra* note 2, at 487.

29. *Id.* at 490-91: "Primarily these distortions consist of inequities in the allocation of benefits. The greatest amounts of financial assistance have been won by those with the greatest political power. Thus, there is much more aid for home ownership than for public housing, much more assistance for agriculture than for the urban worker (the structure of federal tax exemptions and rates is one of the most telling reflections of the relative strengths of various interests. . . . Receipt of government aid by the poor has carried a stigma whereas receipt of government aid by the rest of the economy has almost been made into a virtue. Indeed, one can detect a strong element of self-righteousness in the fact that some of those who receive public assistance, like ranchers, are quick to assume an attitude of condemnation toward those who need that other form of assistance called "social welfare." The effect of this double standard is to deny to welfare recipients the values and protections that the rest of the publicly supported private economy enjoys, and to do so on high moral grounds. Social welfare is thus left out of the developing American Public-private state."

most easily ignored and who are, indeed, harmed by legislative inaction. The proposed legislative package of the Florida Welfare Rights Organization[30] is grounded in the practicality of those who live "on welfare." They have not unrealistically sought a giveaway program. Instead, the suggestions frequently center around the concept of work and educational incentive: baby sitting and special allowances for those who attend school or college in an effort to increase their skills; tuition and allowances for those who qualify for college; revamping of the system so that a recipient is not penalized for working; baby sitting and nursery school payments for children too young for daycare if the mother wants to work. Other proposals cover raising the salaries and changing the qualifications of social workers with the hope of decreasing the high turnover; allowances for nonprescription drugs, furniture, and clothing; an allowance for telephones (presently considered a luxury); encouragement of a state food stamp program. Almost all of these suggestions have been made at some time by the experts in the field. The fact that they are now being pushed by a state affiliate of a nationwide organization of welfare recipients means that, for the first time, the poor are attempting to influence the formative stages of legislation under which they must live.

There are, of course, existing welfare laws that are more vulnerable to attack through litigation than legislation. Here, the law reform efforts of LSP lawyers are called into play. Sometimes on behalf of a welfare rights organization, more frequently for an individual client, LSP attorneys have increasingly found themselves needing more than the "fair hearing" procedure to fully represent their client. A due process hearing is an adequate arena for an incorrect application of a basically sound regulation. However, if the hearing process itself lacks procedural safeguards or a regulation is unconstitutional or a state plan is administered in a discriminatory manner, judicial inquiry is necessary.

Illustrative of the "law reform welfare case" is *King v. Smith*,[31] the first instance of the Supreme Court's direct consideration of a welfare issue. A unanimous Court held that Alabama's "substitute father" rule, which disqualified otherwise eligible AFDC children because their mother cohabited with a man, was invalid as inconsistent with title IV of the Social Security Act. Since it stands as one of only two pronouncements of the high Court thinking on welfare Chief Justice Warren's opinion is especally interesting in its complete rejection of any particular degree of "worthiness" as a prerequisite for retaining welfare benefits. The Court said that although such matters as the mother's sexual behavior "would have been relevant at one time . . . subsequent developments clearly establish that these state interests are not presently legitimate justification for AFDC disqualification."[32] Furthermore, the Court concluded:[33]

30. From the minutes of the meeting held in Tampa, Fla., Feb. 15, 16, 1969.
31. 392 U.S. 309 (1968).
32. *Id.* at 320.
33. *Id.* at 325-26 (footnotes omitted).

> Congress has determined that immorality and illegitimacy should be dealt with through rehabilitative measures rather than measures that punish dependent children, and that protection of such children is the paramount goal of AFDC. In light of the Fleming Ruling and the 1961, 1962, and 1968 amendments to the Social Security Act, it is simply inconceivable, as HEW has recognized, that Alabama is free to discourage immorality and illegitimacy by the device of absolute disqualification of needy children.

One reason for dwelling on the *King* decision is to highlight the fantastic progress the law has made in the last half of this decade in the field of welfare. In 1965 when Ed Sparer was writing the "pathfinder" articles[34] of welfare law, he was unable to cite a single case[35] then before the courts testing the principles he was expounding. Three years later the Supreme Court rendered a sophisticated analysis of the "worth" factor in welfare administration *and* rejected out of hand any attempt to infuse morality between the needy child and the government benefit. The law has reacted with a great deal more speed and intelligence than was imaginable.

Turning to the lower courts, almost every jurisdiction is now becoming conversant with a language that used to be the exclusive domain of the social worker. The issues are as varied as the plaintiffs. The decisions are not always those that the LSP attorneys might have desired, but as a backlog of precedent builds, a significant pattern of concern for the individual recipient or potential recipient as a "first-class citizen" is emerging. The courts are in agreement with the clients who feel that one should not be made less of a citizen in order to be able to participate in a program supposedly designed for his benefit. His right of privacy,[36] of free movement,[37] of rearing his children as he desires must remain inviolate. He cannot be made or allowed to sign away equal protection and due process of the laws to receive his meager allowance.[38] Once the benefit, no matter how gratuitous in origin, has been granted to some, it cannot be arbitrarily denied to others similarly situated.[39]

While perhaps a bit more extensive than most, our experience and that of our program in welfare law reform is fairly typical of the issues being pursued by LSP lawyers across the country. The cases fall into three categories: (1) bringing local practice into conformity with state and federal standards; (2) challenging statewide regulations, statutes, or state-policy-condoned practices by reference to federal requirements and constitutional standards; (3) attacking a practice authorized by state regulation on the grounds of unconstitutionality.

The first category is frequently settled prior to litigation by negotiation

34. *E.g.*, Sparer, note 1 *supra* and the author's articles cited therein.

35. *Id.* at 366.

36. Parrish v. Civil Service Comm'n, 66 Cal. 2d 260, 425 P.2d 223, 57 Cal. Rptr. 623 (1967).

37. Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967).

38. *See* O'Neil, *Unconstitutional Conditions: Welfare Benefits With Strings Attached*, 54 CALIF. L. REV. 443 (1966).

39. *See* Sherbert v. Verner, 374 U.S. 389, 405 (1962).

with the state agency. A precipitant lawsuit gains nothing for the client and can detract from the spirit of cooperation that the state agency often freely gives. An example of a possibly legitimate state regulation, which was applied locally in a discriminatory manner, is the Florida employable mother rule.[40] When the season for truck vegetables began in the south central portion of Florida this winter, the district employees of the State Welfare Department in some locales sent out letters that said welfare checks would be terminated for AFDC mothers who had any past record of working in the fields since this type of work was generally available. Generally, only black women worked in the fields, so the letters went out to black mothers primarily and to only very few white mothers. Such an application of the employable mother rule is not acceptable. The expectation that Negroes must accept less desirable jobs than non-Negroes as an alternative to receiving aid is unsupportable. The LSP attorneys argued that any policy regarding employment must be made on a one-to-one basis, rather than across the ethnic board. The district employees' action amounted to an assumption of the existence of income that in many cases was not actually forthcoming. The first woman to bring this matter to our attention was a new mother of a nine-month old baby girl. None of the day care centers would take a child under two years of age so that even though the woman had worked in the fields in previous years she could not be expected to do so this year. After the LSP intervention and negotiation with the state and district administrators, individual interviews were conducted with those who had worked in the fields to determine if their circumstances were such that they would *in fact* be working in the fields this year and if, on the basis of their first few weeks work, they could be expected to make enough money to be beyond the income standards of welfare.

Another case that falls in this category had to be litigated. It concerned the failure of doctors in a certain city to comply with the state welfare civil rights provisions. These doctors, paid with state welfare funds for performing medical examinations or other services, maintained racially segregated waiting rooms. There were no doctors in the locale who did not follow this practice. Thus, the welfare recipients were forced to undergo discriminatory practices in order to receive certain benefits. A section 1983 civil rights complaint was filed on behalf of the recipients and is presently pending in federal court.[41]

The second category, that of statewide practices in violation of HEW or constitutional standards, is illustrated by two matters presently concerning our office. One is a federal suit attacking the practice of terminating welfare benefits without a prior hearing.[42] The other is a "lawyer's case."[43] Currently

40. *Cf.*, Anderson v. Schaefer, Civ. No. 10443 (N.D. Ga., April 4, 1968) (Georgia employable mother case) (unreported).

41. Colar Jackson v. Department of Pub. Welfare, Civ. No. 68-12 FM (M.D. Fla. filed 1968).

42. Clarence Jackson v. Department of Pub. Welfare, Civ. E.C. (S.D. Fla., filed May 20, 1968).

43. *See* Graham, *supra* note 26, at 872-76.

still in the discussion stage with the state agency, the availability of a usable "Fair Hearing Digest" is of immense interest to those lawyers representing clients in the welfare administrative hearings.[44] The LSP attorneys contend that such a digest is dictated by the *Federal Handbook of Public Assistance Administration,* which requires state agencies to:[45]

> [E]stablish and maintain a method of informing, at least in summary form, all local agencies of all fair hearing decisions . . . be accessible to the claimants, their representatives, and the public. . . .

The State Department of Public Welfare has so far conceded to publish occasional summaries of "important" agency decisions. This is, of course, inadequate to the practicing lawyer whose search for precedent with which to argue before the highly informal hearings officer is hampered by a present inadequate reporting of agency decisions. Further negotiations will be endeavored before the filing of suit.

The third category is the newsworthy one. The upsetting of a state welfare regulation or statute on constitutional grounds is perhaps the greatest delight of the practicing welfare lawyer. It is the thrill of seeing the courts endorse the principles that are basic to his conception of justice. Still, we will try to put these cases in perspective. The big constitutional test case may get a great deal of publicity but, as *Brown v. Board of Education*[46] has taught us, it frequently leaves the actuality of the client's existence unchanged. This is not to detract from the significant impact of such cases as the removal of residency requirements and the challenge to maximum ceilings of grants. They can, of course, make real contributions to expanding the possibilities of relief and the levels of existence under welfare. Our program, like many others, has filed cases challenging these arbitrary regulations and statutes. When whole classes of individuals can suddenly be brought within the purview of welfare by a single case, the lawyer must guard against having a distorted image of his own ability to affect the system. Although *King v. Smith*[47] clearly and unambiguously declared the invalidity of "substitute father" rules, almost every state still has some version of "man-in-the-house," "substitute father," or "suitable home" rule by which needy children can be disqualified from benefits because their mother's activities are deemed "immoral" by state agency or legislative officials.[48]

The lawyer is one of many forces contributing to the shaping of new welfare system or the ultimate rejection of the entire philosophy of the present welfare system. Although his importance in the over-all effort for long range reform is no greater than that of the welfare rights movement

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44. *Cf.*, Little v. Montgomery, No. 592396 (Cal. Super. Ct., San Francisco County, filed June 26, 1968).

45. Pt. IV, §6200 (c), effective July 1, 1968 (H.T. No. 140).

46. 347 U.S. 487 (1954).

47. 392 U.S. 309 (1968).

48. *See* Comment, *Man-in-the-House Rules After King v. Smith: New HEW Regulations,* 14 WELFARE L. BULL. 19 (1968).

or of some aware public figures and legislators, he is uniquely equipped to focus judicial attention on *present* violations. His legal skills can make the interim period between welfare today and the hopefully better future alternative less fraught with lawlessness, arbitrary and discriminatory action, and futility of purpose for those who must attempt to survive under a system that all admit to be inadequate. This is not a glamorous role, but its value in preserving whatever small part of the concept of America the welfare recipient still retains is inestimable.