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Chapter 5: Poverty Law

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§5.1. **Introduction.** Despite the considerable attention that has been focused on the special legal problems of people living below the poverty line and on the general inadequacy of legal services provided to them, there have been relatively few developments in Massachusetts law during the past SURVEY year specifically addressed to this issue. This is, perhaps, not surprising, since despite increasing interest, very few poor people come into the appellate courts except as criminal defendants; indeed, very few come into the courts at all to seek vindication of legally protected rights. There are also very limited organized constituencies to seek new legislation on their behalf. If the following account, therefore, suggests no particular trend either in the judiciary or in the legislature in this area, it is simply because there is none. It remains to be seen whether the increasing activity in providing advocates for the poor, as reported in Section C below, will change this situation.

A. COURT DECISIONS

§5.2. **Housing.** Many judicial decisions involving disputes between affluent litigants may affect the poor in some way; therefore, any discussion limited to "poverty law" must focus on the few cases having a direct bearing on the legal relationships of the economically disadvantaged, regardless of whether the litigant immediately involved could be classified as "poor."

The Supreme Judicial Court's decision in *Stapleton v. Cohen*[1] did little to achieve the goal of providing greater incentives for adequate maintenance of slum housing. In the *Stapleton* case the plaintiff slipped and fell in a dimly lit common hallway. Evidence was introduced showing that the common passageway had less light than was required by the Sanitary Code of the Department of Health.[2] In denying recovery, the Court refused to admit the violation of the Sanitary

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§5.2. 1 1967 Mass. Adv. Sh. 1171, 228 N.E.2d 64, also noted in §3.3 *supra*.
2 Sanitary Code of the State Department of Public Health, Art. II, §7.5.

Code as evidence of negligence. It relied on the long-standing rule that the property owner has a duty only to use reasonable care to keep the property in the same condition it was in, or appeared to be in, at the time of the creation of the tenancy.[3] In effect, the Court removed a substantial incentive for compliance with applicable building codes. A contrary decision, would, however, place heavy burdens on landowners unable to finance appropriate alterations. Nonetheless, the rule as set forth in *Stapleton* renders the slum-dwellers' existence not only more uncomfortable but also more hazardous.

It appears that the more affluent vacationer will be better protected. In *Horton v. Marston*[4] the plaintiff leased a summer cottage from September, 1962 through May, 1963. On May 8, 1963, she was injured when a gas stove on the leased premises exploded. The Court ruled that the defendant landowner could be held liable for a breach of an implied warranty to provide inhabitable premises, and that the warranty applied to defects that do not render the premises, as a whole, uninhabitable.[5] The Court did not deem the nine-month period so long as to place the risk of concealed defects on the tenant. In reaching its decision, the Court quoted approvingly authority that "an important part of what the hirer . . . [paid for was] the opportunity to enjoy . . . [the dwelling] without delay, and without the expense of preparing for its use."[6] It remains to be seen whether the Court will extend this doctrine to include those tenants in substandard housing who attempt to recover for injuries sustained by hidden defects when toilets, stoves, and heating systems break down.

§5.3. **Welfare.** In *City of Brockton v. Massachusetts Department of Public Welfare*,[1] an applicant was denied hospital benefits under General Laws, Chapter 118A, Sections 13 through 32 by the local welfare board. The applicant appealed and the State Department of Public Welfare reversed the local board. The City of Brockton, acting through the local board, appealed the department's ruling. The local board contended that the applicant did not qualify because he had made a transfer of assets for less than adequate consideration more than one year, but within five years, of the date of application.[2] The Superior Court agreed with the local board. The Supreme Judicial Court reversed the lower court and affirmed the ruling of the department.

The Court reasoned that the provisions for old age assistance[3] differed in many respects from the provisions for medical assistance to the aged.[4] One of the major differences, the Court noted, concerns the

3 1967 Mass. Adv. Sh. at 1173, 228 N.E.2d at 66.
4 1967 Mass. Adv. Sh. 591, 225 N.E.2d 311, also noted in §1.4 *supra*.
5 Id. at 594, 225 N.E.2d at 313.
6 Ingalls v. Hobbs, 156 Mass. 348, 350, 31 N.E. 286 (1892).

§5.3. 1 1967 Mass. Adv. Sh. 505, 224 N.E.2d 498.
2 See G.L., c. 118A, §6.
3 Id. §§1-12.
4 Id. §§13-32.

time allowed in which to make transfers for inadequate consideration without being denied assistance. The Court also found that under the Administrative Procedure Act,[5] the rulings of the department as to matters of fact are final, but that Section 21 of the Medical Assistance for the Aged Act does not deny judicial review on matters of law.

Although this decision, by allowing the city to appeal rulings of the department, reduces the ability of the state to establish tight, uniform controls over welfare, it is not unfair in light of the clear language of the Administrative Procedure Act and the contributions made by the municipalities to support this welfare burden. Recent legislation, however, has abolished local welfare boards and shifted the financial burden of welfare to the Commonwealth.[6]

One could read the Court's opinion as a recognition, sub silentio, of the harshness of disqualifying a beneficiary from receiving necessary expenses generated by factors beyond his control. Realistically, one should recognize the hospital's participation as a party; the decision funnels more state revenues to the hospitals, thereby reducing the cost of hospital care rendered to paying patients.

Old-age assistance does not represent a gift to the recipient since a lien attaches to the recipient's property. The statute, however, does not set forth a time period within which a bill must be brought to establish the lien. In *City of Medford v. Quinn*,[7] the Supreme Judicial Court rejected the trial judge's determination that the "lien *must* be enforced within a 'reasonable time' or the right is lost."[8] The Court concluded that "the right to enforce a lien . . . [is] limited only by a showing of undue hardship. . . ."[9] Since the Court construed the legislative purpose of old-age assistance to be to offer relief from suffering, rather than to confer a benefit on the recipient's heirs, the Court strained to uphold the enforceability of the lien even though it admitted that the defendants were "inconvenienced."

§5.4. **Domestic relations.** With welfare workers regularly encouraging deserted mothers to pursue fathers of their illegitimate offspring, lawyers should recognize the potentially increased utilization of the Uniform Reciprocal Enforcement of Support Act.[1] The Supreme Judicial Court in *M__ v. W__*[2] allowed enforcement of a support order under the Act where a child was conceived in New York, and the father resided in Massachusetts.

Although criminal non-support proceedings, commenced in a district court, may be tried de novo in the Superior Court, enforcement under the Reciprocal Enforcement of Support Act does not provide such a

5 Id., c. 30A, §14.
6 See §5.8 *infra*.
7 1967 Mass. Adv. Sh. 271, 223 N.E.2d 698.
8 Id. at 274, 223 N.E.2d at 701.
9 Id.

§5.4. 1 G.L., c. 273A.
2 1967 Mass. Adv. Sh. 1039, 227 N.E.2d 469, also noted in §4.1 *supra*.

right. The Supreme Judicial Court, however, did not feel this difference precluded the district courts from acting to enforce the support order. The Court noted, however, that the proceedings under the act may not be appropriate when the issue of paternity is disputed, since the petitioner may never have appeared in the court of the responding state.[3] In the instant case, the father admitted paternity.

Since the Court conceded that the act is a criminal statute, a respondent presumably possesses the right to refuse to testify in a proceeding under the act.[4] The Court left open, however, the question whether such a refusal to testify on Fifth Amendment grounds sufficiently establishes a disputed issue of paternity, rendering inappropriate this method of enforcement under the act. Allowing a respondent to escape liability by his mere refusal to testify in the responding state renders the act ineffective in many situations, while basing liability upon the unchallenged testimony of a distant mother raises problems of fairness. Furthermore, requiring the respondent to testify to avoid liability may infringe substantially on his Fifth Amendment rights.

§5.5. **Right to counsel.** Applying the principles of *In re Gault*,[1] the Supreme Judicial Court in *Marsden v. Commonwealth*[2] held that the right to counsel exists in juvenile proceedings. In stressing the limited scope of its holding, the Court said that the juvenile, in not asking for counsel, "did not waive counsel."[3] Presumably, a juvenile would not be able, in any event, to waive this right. *Gault* and *Marsden* extend the Sixth Amendment right of counsel to cases not denominated as "criminal" and stress that failure to have counsel may lead the child to forego rights such as the lodging of an appeal from an adverse determination. Perhaps the Court may, in civil cases, extend similar rights to welfare recipients and other indigents who often need counsel to assert their claims.

§5.6. **Search and seizure.** In *Commonwealth v. Hadley*,[1] the Supreme Judicial Court held the Fourth and Fourteenth Amendments inapplicable to routine inspections by health inspectors. The United States Supreme Court's subsequent decision to the contrary[2] opens the way for further challenges to the activities of governmental officials. In so far as procedural safeguards are necessary to ensure protection

[3] Id. at 1044, 227 N.E.2d at 474.

[4] It must be granted that the defendant can avoid the criminal liability under this section by the mere expedient of satisfying the support obligation. Nonetheless, the privilege should exist in most cases since G.L., c. 273, §11, makes it a crime to beget an illegitimate child in Massachusetts.

§5.5. [1] 387 U.S. 1 (1967).
[2] 1967 Mass. Adv. Sh. 887, 227 N.E.2d 1, also noted in §9.14 *infra*.
[3] Id. at 890, 227 N.E.2d at 3.

§5.6. [1] 1966 Mass. Adv. Sh. 1359, 222 N.E.2d 681.
[2] Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523 (1967).

against unjust substantive laws, one would welcome prohibitions on the midnight raids by welfare investigators seeking to find a male inhabitant of households receiving aid for dependent children.

§5.7. **Race.** In upholding the state's Racial Imbalance Law,[1] the Supreme Judicial Court utilized broad language that might insulate other compensatory programs from Fourteenth Amendment attacks:

> It would be the height of irony if the racial imbalance act, enacted as it was with the laudable purpose of achieving equal educational opportunities, should, by prescribing school pupil allocations based on race, flounder on unsuspected shoals of the Fourteenth Amendment.[2]

The Court reasoned that "the heart of the matter is whether the means are reasonably related to the objective . . ."[3] and "until a pupil has been in fact excluded from a public school on account of race, we are unimpressed with the argument that the act works a denial of equal protection."[4] Unless the Court is willing to say that every job, housing and educational preference granted to a black person by necessity excludes a white person on the grounds of race, then the Court leaves room for legislative and administrative experimentation with compensatory programs that are specifically designed to aid black citizens.

B. Legislative Developments

§5.8. **Welfare.** Rising welfare rolls compared with rising overall prosperity have proved one of the major paradoxes of the past decade. Finding a solution to the welfare problem may prove to be one of the major domestic preoccupations in the coming decade. During the 1967 Survey year, the General Court moved to deal with the problem in a way that may make substantive changes more likely, by reorganizing the administrative and fiscal structure of welfare and by placing the system solely within the control of the state.[1] The act, to take effect on July 1, 1968, makes no substantive changes in the present law or eligibility standards. At the present time, no provision has been made for the funding of the program, which will be achieved through the state's general fund. It is estimated that cost will be $65 million in the first year.[2]

Under the new act, the state Department of Welfare will be under the direct supervision and control of a Commissioner of Public Wel-

§5.7. [1] Acts of 1965, c. 641.

[2] School Committee of Boston v. Board of Education, 1967 Mass. Adv. Sh. 1027, 1031, 227 N.E.2d 729, 733, also noted in §§8.6-8.9 *infra*.

[3] Id.

[4] Id. at 1033, 227 N.E.2d at 734.

§5.8. [1] Acts of 1967, c. 658.

[2] Boston Globe, Oct. 30, 1967, p. 10, col. 2.

fare, appointed by the Governor for a term of office coterminous with his own.[3] The commissioner must have a master's degree in social work and at least ten years of social work experience. He will have the power to appoint and dismiss all employees in the department[4] and to make all necessary rules and regulations.

In place of the presently existing two hundred and seventy local district offices, public welfare services will be directly provided by approximately fifty "community service centers"[5] supervised by suitably located regional offices. These centers will be under the control of professionally qualified center directors, appointed by the commissioner. The concept of these "multi-service" centers, which will provide their clients with comprehensive services and referrals to appropriate agencies, was suggested by a recent report sponsored by the co-sponsors of the bill, the Massachusetts Commission on Children and Youth, and the United Community Services of Greater Boston.[6] In addition to the function of the present district offices in providing categorical assistance and general relief after the determination of the client's eligibility, the new community service centers will directly dispense services as disparate as "casework or counseling," "protective services for children, unmarried mothers, and the aging and other adults," "legal services related to social problems," "foster family care," "adoption and homemaker and day care services," "informal education and group activities," and "training in responsible parenthood and home management."[7] The new act thus commits Massachusetts welfare administration to the existing social work philosophy advocating service and rehabilitation. This is contrary to the view of those who maintain that such comprehensive servicing interferes unreasonably with the client's freedom and that much of the resources devoted to the identification and provision of the various services could be put to the alternative use of providing the poor what they most need, namely, money.

To offset the centralization of the welfare administration at a time when decentralization is being urged as a cure for the alienation and lack of involvement of the poor, Section 7 of the act established a "community center board" at each community service center, consisting of fifteen to thirty members, initially constituted by one nominee from the city councils of each town in the area, with any remaining nominations being made by the commissioner. Thereafter, new appointments will be made by the commissioner from a list of nominations prepared by the board. Although the object of the board is stated to be "to assure effective citizen participation in the work of the

3 Acts of 1967, c. 658, §3.

4 Id. §9 subject to exceptions therein.

5 Id. §84 establishes the criteria to be used in determining the location of these centers.

6 See National Study Service, Meeting the Problems of People in Massachusetts (1965).

7 Acts of 1967, c. 658, §2.

community service centers,"[8] its role is purely advisory to the center and the commissioner.[9] A "fraudulent claims board"[10] and a "state advisory board"[11] complete the new administrative structure.

The main goal of the new act is to ensure uniform and equitable administration of the welfare laws throughout all municipalities in the Commonwealth. Although welfare recipients in small and relatively wealthy towns might tend to lose by the equalization process, the new system will probably eliminate waste. This will be particularly so in towns with no welfare case load or applications, which were formerly required to maintain funds and trained personnel for the contingency of a welfare application.[12] Further, the new legislation may serve to raise the grants of recipients in the larger urban areas such as Boston. All this depends upon the success of the General Court in obtaining the necessary funds.

Ultimately, however, the new act pins its hopes on the new community service centers, where "a spectrum of social and legal services would be provided so that welfare recipients may far more readily be transformed into viable, productive members of our society."[13] This spectrum is to be achieved, however, without any substantive change in the existing law and eligibility requirements. Thus, for example, clients will still be required to bring criminal support actions against their relatives in order to be eligible for a grant.[14] In many other ways the recipients' actions or spending patterns will, inevitably, be controlled by and conditioned on their "cooperation" with the department. "Special need" will still have to be determined by a social worker, albeit a member of the state bureaucracy instead of a member of the city bureaucracy.[15] The judgment as to the amount required to "bring up a child properly in the client's home"[16] will still have to be decided in accordance with an inflexible, predetermined catalogue of "budgetary standards." Nor have any changes been made in the appeals procedures, where, for example, a provision for the reporting of appeal decisions would subject the decision-makers to the constraints induced by the opportunity for public scrutiny (and would make appeal decisions available to readers of this SURVEY!).

Whether any long-term breakthrough in welfare will be achieved will depend very much on the enterprise and sensitivity of the new state commissioner and his staff. No streamlining or reorganization of the administration, however, will ever overcome the institutional

[8] Id. §7.
[9] Id.
[10] Id. §5A.
[11] Id. §6.
[12] See Cronin, Impact of Federal Welfare Grants on Municipal Government, 40 B.U.L. Rev. 531, 534 (1960).
[13] Boston Globe, March 13, 1967 at 10, col. 2.
[14] See Acts of 1967, c. 648, §30(3).
[15] Id. §§79, 80, provide that all welfare workers currently working for towns and cities would be retained as employees in the new state-administered system.
[16] Id. §§28(2), 16(1), 59(4).

limitations of a welfare system which requires procedures other than a guarantee, to individuals and families, of a basic minimum income, subject only to the kind of sampling verification that is employed by government in regulating the financial affairs of the more affluent.

§5.9. **Anti-discrimination legislation.** The mere passing of three acts relating to the Massachusetts Commission Against Discrimination is in itself persuasive evidence that anti-discrimination laws have been accepted in this state. Whether the reason for the acceptance lies in a change in attitudes, or lies in the fact that the law's enforcement has constituted no threat to landlords and employers, is debatable. One of these acts[1] eliminates the former waiting period during which time no injunction could be issued restraining an employer or a property-owner who is before the Commission.[2] The bill submitted to the legislature by the Governor[3] sought to reduce the waiting period from seventy-two to twenty-four hours, but an amendment in the Senate Judiciary Committee eliminated the waiting period entirely.

Without opposition from real estate interest groups, the legislature passed an act to penalize a real estate broker against whom a finding of discrimination has been made by the Commission at a public hearing.[4] Whereas, formerly, the Commission had power to refer the name of such a broker to the Massachusetts Licensing Board for disciplinary action,[5] no such action had ever been taken. Under the new amendment, a broker would have his license suspended for thirty days after the first finding against him, and for ninety days following the second finding within two years.

Another new act allows a review procedure to a complainant against whom a ruling of no probable cause had been made by the State Commissioner, following an investigation of the complainant's allegation.[6] The complainant, within ten days of notice of no probable cause of discrimination made by a member of the Commission, may file a request for a "preliminary hearing" before the full Commission. The Commission may, in its discretion, allow such a request. Formerly, the complainant had no recourse from such a ruling while the respondent, in the event of a finding of probable cause being made against him, could refuse to conciliate the matter and then contest the finding at a public hearing of the full Commission. Under the new amendment, the complainant may seek before the full Commission a review of the lack of probable cause finding in a "preliminary hearing." This review, however, will not be in a public hearing. Thus a discrepancy remains between the review procedures open to respondents and those open to complainants.

§5.10. **Housing.** The majority of legislative items recommended

§5.9. [1] Acts of 1967, c. 525.
[2] Id., c. 570.
[3] House No. 4040 (1967).
[4] Acts of 1967, c. 148.
[5] Acts of 1961, c. 128.
[6] Acts of 1967, c. 483.

by the Special Commission on Low-income Housing[1] was passed in 1966. In 1967, four more of its proposals were enacted. Under the Veterans' Housing Program,[2] the Commonwealth of Massachusetts pays an annual maximum subsidy of two and one-half percent of the total development costs of veterans' housing for a period of forty years. The 1967 Veterans' Housing Act[3] raises this subsidy to four percent, which, according to the Special Commission, "would permit an average rent decrease of approximately $10-$14 per month, which in turn means that apartments can be made available to families with an average income $600-$900 below the present average."[4]

Another act[5] increases the Commonwealth's contribution to the Housing for the Elderly Program, and removes restrictions, which provided for a one-hundred unit maximum and a one-eighth-mile separation between projects.[6]

Various attempts have been made to facilitate tracing the true owner of code-delinquent property. In 1966 an act was passed allowing complaints to be filed against the city or town clerk when the owner could not be located.[7] This year, an act was passed that requires the conspicuous posting of the name, address and telephone number of the owner or agent of premises in every multi-unit dwelling,[8] and the disclosure to the city or town clerk of the true name and address of purchasers of real estate.[9]

C. Other Developments

§5.11. Neighborhood law offices. A most significant development is the opening of neighborhood law offices, financed by the Office of Economic Opportunity, in eleven communities: Boston, Cambridge, Chelsea-Revere, Lynn, Lowell, Springfield, Worcester, Fitchburg, New Bedford, Barnstable County, and Brockton. Most of the legal services programs are organized as non-profit corporations. A majority of each board of directors are lawyers, and at least one third of the board is comprised of laymen who represent the low-income community served by the office. For convenience to clients, many of the offices are open evenings and weekends. Fundamental to each program is a commitment to projects of community education about the law in order to help people anticipate legal problems and thereby prevent legal crises. Each office has standards of financial eligibility for applicants; those ineligible for free service are referred to private attorneys through bar association referral plans.

§5.10. 1 House No. 4040 (1965).
2 G.L., c. 121, §§26NN-26PP.
3 Acts of 1967, c. 635.
4 House No. 4040, at 22 (1965).
5 Acts of 1967, c. 572.
6 G.L., c. 121, §§26SS-26VV.
7 Acts of 1966, c. 707, §8.
8 Acts of 1967, c. 260.
9 Id., c. 611.

The neighborhood offices usually handle only civil legal matters; the statewide Massachusetts Defenders Committee is responsible for counsel to indigent criminal defendants. Most neighborhood offices are committed to law reform as well as mere legal service. Suits have been filed, for example, to challenge arbitrary cutoffs from public welfare without notice and hearing, to attack evictions from public housing without announced reason, to prevent arbitrary suspensions from school, and to thwart finance companies which abuse the legal process by trying to swear out criminal, instead of civil, complaints against defaulting debtors who must hold on to mortgaged furniture because of competing liens against the furniture. Other activities include counsel to community groups which seek zoning changes to protect their neighborhoods against industrial takeover, or which desire to form credit unions and consumer cooperatives, or which hope to form public housing tenant unions or unions of welfare recipients. Neighborhood law offices, therefore, are important to the strategy for developing new community institutions in the cities.