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Chapter 9: Poverty Law

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C H A P T E R 9

Poverty Law

PAUL GARRITY *and* NATASHA ROSE

§9.1. Introduction. In contrast to the almost moribund situation summarized in the 1967 SURVEY, there have been many significant poverty law developments in and affecting Massachusetts in the past two years.¹ For example, the Supreme Court of the United States has adjudicated conflicts resulting in important changes improving the status of the poor who reside in public housing² and who receive public assistance.³ The Congress, in the guise of creative federalism but in recognition of demonstrated local needs met by local inaction, has authorized (but unfortunately underfunded) scores of programs responding to the housing, income, educational and other problems of the poor and disadvantaged.⁴

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§9.1. ¹In this chapter the authors have not considered domestic relations or consumer and commercial law issues affecting low income individuals and groups because of coverage of these areas in other chapters. Representation of parties in domestic relations matters absorbs a significant portion of the average poverty law practitioner's time. However, sociological and economic issues far outnumber, and are often intertwined with, the relatively few poverty law problems in domestic relations, such as, for example, the allocation of insufficient family resources between separating low income spouses. The most perceptive analysis along these lines is contained in tenBroek, California's Dual System of Family Law: Its Origin, Development, and Present Status, 16 Stan. L. Rev. 257, 900 (1964), 17 Stan. L. Rev. 614 (1965). The 1969 SURVEY devotes an entire chapter to consumer law and further coverage would be excessively redundant. Criminal law problems are also adequately covered elsewhere. A case could be made for summarizing developments in selective service law since it operates most unfairly in respect to the poor and disadvantaged, who are rarely eligible for educational and employment deferments. The authors have been advised that the topic will be taken up next year.

² See, e.g., *Thorpe v. Housing Authority of the City of Durham*, 386 U.S. 670 (1967).

³ See, e.g., *King v. Smith*, 392 U.S. 309 (1968); and *Shapiro v. Thompson*, 394 U.S. 618 (1969).

⁴ Report of the National Advisory Commission on Civil Disorders 410-483 (N.Y. Times ed. 1968). Massachusetts' performance parallels that of the federal efforts, and a glaring example of equally perverted priorities is Acts of 1969, c. 239, where an emergency preamble was appended to legislation providing for additional copies of the book of biographical sketches and portraits of state officers.

Since 1967, federally funded legal services programs have been established or augmented in virtually every urban center and geographical section of the Commonwealth.⁵ There has been an attendant increase in poverty law litigation, including several reported appellate decisions. The Massachusetts Law Reform Institute, which assists and coordinates the test case activities of legal services programs on a statewide basis, has allocated a considerable portion of its resources to the drafting of and successful lobbying for legislation.⁶ However, most of the activities on behalf of low income individuals and neighborhoods by attorneys representing the poor have been and will remain unreported in the compilations of cases and statutes. The day-to-day advocacy of legal services lawyers and volunteer private practitioners in situations involving the drafting of model leases for public housing tenants, negotiating with city officials for improved municipal services, acting as counsel in administrative hearings and in achieving compromise and settlement by the mere fact of their representation in situations involving consumer fraud, has made the law far more responsive to the poor than several volumes of enlightened but rarely relied on or applied case or statutory precedents.

§9.2. Legal services. The first and only prior SURVEY summary of poverty law developments, in 1967, concluded with a discussion of legal services;¹ but in 1969 it is perhaps more appropriate to begin this report and analysis from the perspective of the developers. Perhaps the best way of approximating a definition of poverty law, if it still requires defining after decades of national reflection and debate,² is to focus on the goals of legal services programs.³ Whatever the priority selected by the local program, most legal services attorneys view their responsibilities as including (1) representation of individuals and groups financially unable to retain legal counsel; (2) reformation of law and institutions which discriminate against the poor; and (3) education of the poor to recognize their legal problems and to resort to the appropriate forum for redress. The attempt to achieve any one of these goals results in confrontation with organizations concerned with

⁵ Programs have been established in Boston, Brockton, Cambridge, Fitchburg, Holyoke, Lowell, Lynn, New Bedford, Pittsfield, Revere, Springfield, Worcester and on Cape Cod.

⁶ For a summary of this legislation see Law Reform Newsletter 28-35 (Oct. 1969), published by the Massachusetts Law Reform Institute.

^{§9.2.} ¹ See 1967 Ann. Surv. Mass. Law, Chapter 5.

² For differing perspectives on the dimensions of poverty, see J. Riis, *How the Other Half Lives* (1890); J. Ford and K. Ford, *The Abolition of Poverty* (1937); and Report of the National Advisory Commission on Civil Disorders (N.Y. Times ed. 1968).

³ CCH Pov. L. Rep. ¶6700 (1969). The most comprehensive analysis of legal services programs in operation is to be found in Comment, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 Harv. L. Rev. 805 (1967).

preserving the status quo. To achieve more than one of these objectives involves reconciling the conflict between the dream of delivering comprehensive quality legal services to the poor and the reality of limited personnel and financial resources.

In contrast to the American Medical Association's stand on medicare and medicaid, the American Bar Association has strongly endorsed the Office of Economic Opportunities (OEO) Legal Services Program since its inception.⁴ However, since 1967, in order to mollify the objections of the more conservative segments of the legal profession there has been a requirement that both state and local bar associations must be consulted before new legal services programs are established and prior to the refunding or major program modification of existing projects. In 1969, these conditions were further refined and formalized by inclusion in the Code of Federal Regulations.⁵

The Massachusetts Bar Association has been involved in reviewing proposals for legal services as to both form and substance and to date has not assumed a position in opposition either to the establishment of a new program or to the refunding of an existing one.⁶ A few local bar associations have strenuously opposed the establishment of legal services projects in their communities for various reasons. Some attorneys voice their opposition in terms of concern about a federal take-over of the representation of indigents, which is viewed as primarily the responsibility of an independent bar, while others consider legal services programs to be a threat to their livelihood.

Aggressive advocacy by legal services attorneys and their involvement with unpopular clients has led to efforts of political repression as well as bar vigilance. In late 1969, the so-called "Murphy Amendment," an attempt by the California senator to have Congress enact a gubernatorial veto power over legal services programs, was defeated only after an intense national lobbying effort by legal services attorneys. The Massachusetts and American Bar Associations, as well as other state bars, commendably and vigorously opposed what was accurately characterized as a deplorable effort to emasculate the independence of lawyers.⁷

In their concerns to educate their potential clients concerning their legal rights and remedies, legal services attorneys have adopted a variety of techniques which, if utilized by the private practitioner, would be hastily condemned as in violation of the canons of ethics. Advertisements as to the availability and scope of legal services offered and exhortations to pursue suggested legal remedies have been circulated

⁴ See ABA Resolution on the OEO Legal Services Program adopted by the House of Delegates, February 8, 1965, CCH Pov. L. Rep. ¶6110 (1969).

⁵ 45 C.F.R. §1061 (1969).

⁶ Interview with John M. Ferren, co-chairman, Committee on Legal Services to the Poor of the Massachusetts Bar Association, in Boston, Nov. 12, 1969.

⁷ Feinberg, *Poverty Lawyers for Effective Advocacy*; Chairman's Report, 3 Clearinghouse Rev. 188 (Dec. 1969).

in pamphlets and announced through the news media.⁸ Such activity was formerly unofficially sanctioned⁹ and has now apparently been approved by the revised canons.¹⁰

The final area of concern which has been the object of much bar scrutiny is the client financial eligibility guidelines proposed by OEO, usually modified by local bar associations and then adopted by legal services programs. The current limits grant indigency status and thus allow representation by legal services attorneys to a person with an annual net income ranging between \$2500 to \$3000 with \$500 allowed for each additional dependent.¹¹ These figures, when placed in the context of a family of six subsisting on approximately \$100 per week, are disgracefully inadequate and should be increased to more reasonable limits. However, a tongue-in-cheek argument in favor of lowered eligibility limits might be advanced by some legal services attorneys, all of whom are deluged by both caseload and causes.

In spite of seemingly lavish funding, most legal services programs in Massachusetts have been inundated by indigent clients seeking vindication of the rights which were exhumed or established, and then publicized, by these very same programs. When the war-on-poverty warriors first came on the local scene in late 1965 and early 1966, in their first gush of enthusiasm they announced and advertised their availability to all indigent clients. They vocally condemned community chest and bar association underfunded legal aid societies, which had defined their priorities in terms of social utility and characterized their activities as charitable. More pragmatic than moralistic, the legal services attorneys have rationalized their necessary decision to cut back individual client service and have adopted the jargon of "achieving maximum impact with limited resources." There has occurred a shifting of emphasis to "law reform," never defined, and contemporaneously to a debate concerning how best to limit client intake.¹² *Judicare*, once condemned out of hand as a pocket-lining plot by greedy lawyers, is now being reexamined as furnishing respite from the dreary repetition of simple but time-consuming domestic relations, eviction, and consumer cases.¹³ Some short-range expedients to combine client service with law reform have been employed, such as use of volunteer practitioners and supervised law students whose appetite for poverty law has been further whetted by the new law school courses for which they themselves agitated. Unfortunately, in spite of these additional personnel inputs, even in a state as supposedly saturated with legal services programs as Massachusetts, the poor by and large go unrepre-

⁸ See generally Comment, *Ethical Problems Raised by the Neighborhood Law Office*, 41 *Notre Dame Law* 961 (1966).

⁹ Notes on Ethics, 53 *A.B.A.J.* 1148 (1967).

¹⁰ See *ABA Code of Professional Responsibility* (1969).

¹¹ *CCH Pov. L. Rep.* ¶7300 (1969).

¹² Silver, *Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseloads*, 46 *J. Urban L.* 217 (1968).

¹³ See Robb, *Alternative Legal Assistance Plans*, 14 *Catholic Law* 127 (1968).

sented. Instead of concentrating on adding additional representational manpower, perhaps the justice system itself should be studied with a view to revamping it to provide more ready access to those unreached by it.¹⁴

§9.3. Public assistance. The topic most commonly associated with poverty law would be that of public assistance. Academic preoccupation with the issue of whether welfare is a right to be demanded or largesse to be bestowed¹ has been eclipsed by the grotesque phenomenon of increasing and bitter poverty amidst unparalleled affluence. Unlike the docile poor of other generations, the growing numbers of those receiving public assistance have been organized and radicalized by such groups as the Welfare Rights Organization and Mothers for Adequate Welfare. For the past two years newspapers have contained constant reports of demonstrations and confrontations. The demands of recipients to be allowed adequate benefit levels and to be serviced with some semblance of dignity have conflicted with the needs of the Commonwealth in controlling welfare within its fiscal limits and administrative competencies.² A demonstration stemming from this conflict was the spark that ignited a civil disorder in Roxbury in 1967; but fortunately, since then, conflict resolution has been channeled into legislative and litigative modes. While most recent litigation which has involved issues of adequacy of assistance and procedural due process has been adjudicated by welfare referees, and is presently pending in state and federal courts, there have been a few significant decisions since 1967. Legislatively, the process of change has been more visible.

In August 1969, Governor Sargent approved comprehensive welfare legislation — Chapter 885 of the Acts of 1969, amending most aspects of the Commonwealth's public assistance law. This legislation was drafted to remedy some of the administrative and bureaucratic problems resulting from the equally comprehensive 1967 reorganization amendments, which replaced local welfare programs with a state financed and operated system.³ In contrast, most of the 1969 legislation could be characterized as regulatory and was devised apparently in political response to allegations of irregularities and abuses which, upon investigation, invariably fail of corroboration.

Chapter 885, in many ways, mirrors the schizophrenic welfare system it statutorily amends. Several sections codify some of the more progressive articulations of welfare rights, while other portions, apparently in the interests of fiscal necessity, continue the notion that welfare recipients are something other than full citizens of the body

¹⁴ For some interesting suggestions, see Cahn and Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 *Notre Dame Law*. 927 (1966).

§9.3. ¹ See Reich, *The New Property*, 73 *Yale L.J.* 733 (1964).

² See generally Handler, *Controlling Official Behavior in Welfare Administration*, 54 *Calif. L. Rev.* 479 (1966).

³ Acts of 1967, c. 658. For an analysis of the legislation, see 1967 *Ann. Surv. Mass. Law* §5.8.

politic.⁴ The distinctions among categories of welfare recipients reinforcing the centuries-old dichotomy between the "worthy" and the "unworthy" poor have been retained with somewhat separate statutory treatment accorded recipients of aid to families with dependent children (AFDC), old age assistance (OAA) and disability assistance (DA). In both the former and the new legislation, one could classify OAA recipients as second class, DA recipients as third class, and AFDC recipients as last class citizens.⁵

The first few sections of Chapter 885 define in greater detail the organization of the welfare department by specifying areas of responsibility for assistant commissioners.⁶ This is, perhaps, in response to reports of bureaucratic bumbling at the decision-making level of the department, caused both by ineptitude and by inadequate staffing. The next significant amendments spell out the duties of the fraudulent claims board and establish criminal penalties for the "knowing" making of a false representation to receive or to procure welfare payments.⁷ These sections were amended in 1968,⁸ and again just before the passage of Chapter 885.⁹ This "overamending" is most likely a case of legislators' overreaction under supposed pressure from constituents. The most recent amendment requires the board to report violations to the attorney general, but eliminates the requirement of the previous version which mandated either a criminal prosecution or a civil action to recover benefits fraudulently obtained.¹⁰ Vendors of goods and services to the department are further penalized by exclusion from participating as vendors in any welfare program for three years.¹¹ Both recipients and vendors are required to reimburse the Commonwealth, upon demand, for payments received to which they were not entitled.¹² In the case of indigent recipients, the impossibility of enforcement of this provision again creates the impression of statutory amendment for political purposes.¹³ The cliché of the father who deserts to enable his family to receive welfare assistance is granted credibility by the imposition for a criminal penalty for such conduct.¹⁴

⁴ See Wedemeyer and Moore, *The American Welfare System*, 54 *Calif. L. Rev.* 326 (1966).

⁵ See, e.g., Acts of 1969, c. 687, which increases the amount of the leisure time activities allowance paid to OAA and DA recipients. Apparently, AFDC recipients do not have leisure time since they receive no such allowance. See also Acts of 1969, c. 703, providing school lunches for "needy" elderly persons. See also, R. Elman, *The Poorhouse State—The American Way of Life on Public Assistance* (1966).

⁶ Acts of 1969, c. 885, §3.

⁷ *Id.* §5B.

⁸ Acts of 1968, c. 275.

⁹ Acts of 1969, c. 707, §2.

¹⁰ *Ibid.*

¹¹ Acts of 1969, c. 885, §6.

¹² *Ibid.*

¹³ See Graham, *Public Assistance: The Right to Receive; the Obligation to Repay*, 43 *N.Y.U.L. Rev.* 451 (1968).

¹⁴ Acts of 1969, c. 885, §6.

Not only would proof of this offense appear to be impossible, but the fact of its occurring would seem to be quite remote since Massachusetts public assistance policies allow families to receive welfare although both parents remain in the home. The next few amendments provide for some modicum of citizen participation at both the state advisory board and community service board levels by requiring appointment of welfare recipients to these boards.¹⁵ For some reason these amendments provide for greater welfare recipient representation at the state than at the local level, which may reflect a political decision confirming the reality of harsher local attitudes toward those receiving welfare.

Chapter 18, Section 16, which details fair hearing requirements after denial or termination of assistance, has been completely rewritten.¹⁶ "Coercion" or otherwise improper conduct perpetrated by a welfare worker is now explicitly appealable by a recipient. In accordance with evolving due process requirements,¹⁷ assistance is continued pending an appeal for termination or reduction of assistance where an issue of fact or judgment is involved. Apparently, summary termination would be allowed when the department makes a palpably erroneous *legal* interpretation. Assistance is to be continued, according to the wording of the amendment, "through the end of the month in which the final decision on the hearing is reached."¹⁸ Does this mean that assistance is to be continued until the referee's determination is made, when it is reviewed in superior court, or when the Supreme Judicial Court passes on the matter several years later? Litigation has been filed in the superior court petitioning for continuation of assistance pending judicial review of a referee's decision.¹⁹ Additionally, it would have been desirable to have included provision for a stenographic record of the referee's hearing and also to have required that a recipient be advised in writing of his or her rights to appeal. All too often welfare workers summarily reject applicant requests for increased assistance or special needs without informing them of the appealability of the summary rejection. Unfortunately, there was included no provision requiring access to the client recipient's record by his attorney and for the compilation of decisions in fair hearings for precedent purposes. Both of these matters have also been the subject of litigation.²⁰ It is curious to note that case records can be inspected by state legislators and are available to recipients' agents, but they are not specifically available to legal counsel. Notable also is the fact that the

¹⁵ *Id.* §§7, 8.

¹⁶ *Id.* §11.

¹⁷ See generally, Burrus and Fessler, *Constitutional Due Process Hearing Requirements in the Administration of Public Assistance: The District of Columbia Experience*, 16 *Am. U.L. Rev.* 199 (1967).

¹⁸ *G.L.*, c. 18, §11.

¹⁹ Rankin v. Ott, reported in *Law Reform Newsletter* 11 (May 1969).

²⁰ Malfi v. Kelleher, reported in *Law Reform Newsletter* 9 (Oct. 1969); and Russell v. Ott, reported in *Law Reform Newsletter* 10 (May 1969).

implementation of a Department of Health, Education and Welfare (HEW) regulation originally scheduled to become effective October 1, 1969, and which requires states, with partial federal reimbursement, to furnish counsel to welfare recipients in administrative hearings held to review the denial, termination or reduction of welfare benefits, has been delayed until July 1, 1970.²¹ However, a decision of the superior court in July 1969 appears to mandate this requirement despite the delay in the implementation of the HEW regulation.²²

The next amendment restricts the granting of household furniture to recipients by requiring a father who is unemployed or who has abandoned his family to reimburse the department for its cost and also by severely limiting the allowance of furniture as a special need.²³ Welfare rights groups have been most successful in organizing recipients by assessing emergency or replacement household needs and then by pressing for furniture grants on their behalf. Prior to this amendment, departmental furniture grants policy was tightened up in order to dampen organizing efforts, but concomitant litigation resulted in a return to the status quo.²⁴ The new legislation has achieved what policy was unable to accomplish.

The next important amendment allows the department a lien on private homes to the extent that the purchase is accomplished with welfare moneys.²⁵ This provision and the prohibition on purchase of income property by welfare recipients²⁶ constitute two of the more regressive features of Chapter 885. Instead of lessening dependency, such legislation fosters it. There is also the problem of defining what constitutes welfare moneys. Consider, for example, the very reasonable departmental practice, instituted to insure regularity of support payments, which allows a wife to receive her bi-weekly support from the welfare office if she turns over to the department payments she received from her husband. What is and what is not welfare money here? Contrasted with these amendments, is the authorization granted to the department to proceed, in both the probate and district courts, directly against those responsible to support welfare recipients.²⁷ This amendment would satisfy those interested in fiscal efficiency and also those concerned with the possible fragmenting of family relationships when a recipient is required to initiate her own court proceeding for nonsupport. However, the amendment appears to be in conflict with a later amendment requiring the bringing of criminal proceedings by a recip-

²¹ Law Reform Newsletter 37 (Oct. 1969); see generally, Comment, Right to Counsel in Public Welfare Hearings, 48 B.U.L. Rev. 468 (1968).

²² Aiello v. Ott, No. 86537 Eq. (Suffolk Super. Ct., Feb. 3, 1969).

²³ Acts of 1969, c. 885, §12.

²⁴ Harrison v. Massachusetts Dept. of Public Welfare, CCH Pov. L. Rep. ¶10420 (1969).

²⁵ Acts of 1969, c. 885, §12.

²⁶ Ibid.

²⁷ Ibid.

ient "in appropriate cases," apparently according to the discretion of the department.²⁸

The next several amendments are directed at defining the responsibilities of welfare workers. It appears from the legislation that a welfare worker is to wear two hats — that of a social worker and that of a policeman. This again typifies the schizophrenic mix of Chapter 885. Welfare workers are required to assist recipients in obtaining social services, but they are also under direction to visit each recipient periodically and have the recipient certify in writing he or she will inform the department of any changes in eligibility for assistance.²⁹ The amendment further requires that an application for assistance contain a waiver allowing the department to investigate all facts relating to eligibility, a directive which seems to negate basic concepts of right to privacy.³⁰ It is interesting to note that recipients of aid to families with dependent children must be visited at more frequent intervals than those in other welfare categories.³¹ Again, anomalously, a very progressive feature authorizing the employment of welfare recipients as case aides is included in this amendment.³²

The skein of paternalism rampant throughout Chapter 885 is typified by provisions authorizing public housing landlords to receive rental payments directly from the department.³³ Private landlords are allowed this option if the tenant is two months' rent in arrears. Landlord utilization of both provisions is appealable by the recipient, and prerequisite to their use is a requirement that the dwelling meet minimum housing code standards. It has been an altogether too frequent occurrence — quite similar to the indirect subsidies of practices of ghetto furniture and appliance merchants specializing in selling to welfare clientele³⁴ — that state welfare moneys are diverted to subsidizing slumlords of substandard housing. This abuse is theoretically relieved by requiring welfare workers to institute rent withholding proceedings in cases where it is legally possible. However, the reality that suitable alternative housing is at best in short supply or at worst nonexistent compels the observation that such legislation is irrelevant.

In spite of documentation that there are very few employable welfare recipients, extensive amendments were enacted focusing on this issue

²⁸ *Id.* §20.

²⁹ *Id.* §12.

³⁰ See, e.g., *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967); and *Parrish v. Civil Service Commn. of the County of Alameda*, 66 Cal. 2d 260, 57 Cal. Rptr. 623, 425 P.2d 223 (1967). See generally, Handler and Rosenheim, *Privacy in Welfare: Public Assistance and Juvenile Justice*, 31 *Law & Contemp. Prob.* 377 (1966).

³¹ Acts of 1969, c. 885, §12.

³² *Ibid.*

³³ *Ibid.*

³⁴ See, e.g., *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

with some very interesting inconsistencies.³⁵ For example, if an applicant for assistance fails, if required, to register for work and to accept suitable employment when offered, no assistance will be given. The minor children of the ineligible applicant will continue to receive assistance. The intent is that the recipient work or starve, but what will, of course, really happen is that the entire family will eat less. Requiring an employable welfare recipient to work is eminently rational, but how to accomplish this in a manner which withholds punishment from the innocent remains in the realm of converting dross into gold. The general chapter applicable to all welfare recipients³⁶ now requires all male applicants for assistance between 18 and 62 to register for work with the Division of Employment Security.³⁷ However, the general law pertaining to aid to families with dependent children³⁸ was amended to require unemployed fathers and dependent males 16 years of age or older and not in school to register for work.³⁹ This, of course, conflicts with the general chapter which, for example, orders to work a 19-year-old male who is dependent and in college. Also, for some reason, unemployed young girls are excluded from the work requirements. Once the children of a mother receiving AFDC are in high school, this mother must register for work, but she need not accept employment as a domestic or laborer between 6 P.M. and 6 A.M. Male welfare recipients apparently must accept employment as a domestic if such work is "suitable." There has been some litigation initiated to test certain welfare work requirement provisions, but these cases have not yet reached the appellate level.⁴⁰ The language in the prior AFDC statute to the effect that "the Department shall determine what aid is necessary to enable such parent to bring up such child or children" was retained in Chapter 885.⁴¹ Unfortunately, the amount of aid which "shall be sufficient" to maintain an adequate standard of living is "determined in accordance with the budgetary standards of the department. . . ."⁴² Litigation has been filed challenging the adequacy of public assistance grants, but the suit was dismissed by the superior court with the terse comment "the law has not come this far."⁴³

There are scores of other less significant amendments too numerous to report which in all likelihood will be reamended in subsequent sessions of the General Court. One overall observation concerning Chapter 885 which should be made is that several amendments con-

³⁵ Acts of 1969, c. 885, §14.

³⁶ G.L., c. 117.

³⁷ Acts of 1969, c. 885, §14.

³⁸ G.L., c. 118.

³⁹ Acts of 1969, c. 885, §20.

⁴⁰ See, e.g., *Duato v. Ott*, reported in *Mass. L. Reform Inst. Law Reform Newsletter* 12 (Oct. 1969).

⁴¹ Acts of 1969, c. 885, §20.

⁴² *Id.* §18.

⁴³ *Johnson v. Ott*, CCH *Pov. L. Rep.* ¶10417 (1969).

tain the language, "if not inconsistent with the federal [regulations]."⁴⁴ There is considerable doubt as to the legality of many of these provisions which, when contrasted with prior welfare legislation and policies, are quite reactionary. It would not be surprising if litigation is filed challenging continuation of federal payments to the Commonwealth for the administration of such a patently regressive welfare scheme.

Three reported decisions, in addition to several district and superior court prosecutions for trespass, disturbing the peace and related offenses, have resulted from the militancy of welfare recipients. The demonstrations and confrontations that have occurred have had as their ultimate objective the breakdown and eventual dismantling of the current welfare system and its replacement by some form of guaranteed annual income.⁴⁵

In *Massachusetts Welfare Rights Organization v. Ott*,⁴⁶ a declaratory judgment was sought in order to determine the constitutionality of a department directive establishing procedures to be followed by welfare personnel during demonstrations, disturbances or sit-ins. The United States District Court for the District of Massachusetts decided that the directive guidelines were sufficiently specific and appropriate. The court rejected as frivolous the plaintiffs' contentions that their rights to assemble and petition for redress of grievances had been denied. There is no question that disruptive sit-ins are not constitutionally protected, but peaceful mass demonstrations with the resulting political pressure they engender are a valuable safety-valve in siphoning off potential civil disorders. To deny applicants the recourse to apply for supplemental benefits when their requests are buttressed by the technique of mass demonstration, as was done in this case, appears inappropriate when such benefits are urgently required to maintain living standards. Recipients may conclude that they have no alternative but to escalate their tactics.

In *Hurley v. Hinckley*,⁴⁷ which involved mass sit-ins in a local welfare office, the federal district court determined that the Massachusetts trespass statute was not unconstitutionally overbroad or vague. The court also found that the demonstrators' conduct was disruptive and impeded the "normal use of the welfare office for the public purposes to which it was dedicated."⁴⁸ In *LeClair v. O'Neil*,⁴⁹ another case arising from a welfare office sit-in, but which involved only five persons, while a preliminary injunction was issued by a three-judge panel against the enforcement of the Massachusetts "disturbers of the peace"

⁴⁴ See, e.g., Acts of 1969, c. 885, §12.

⁴⁵ See generally, Albert, *The Nixon Welfare Proposals: An Exercise in Poverty*, 3 Clearinghouse Rev. 125 (Oct. 1969).

⁴⁶ 299 F. Supp. 296 (D. Mass. 1969).

⁴⁷ 304 F. Supp. 704 (D. Mass. 1969).

⁴⁸ Id. at 709.

⁴⁹ 309 F. Supp. 621 (D. Mass. 1969).

statute, the court held that the plaintiffs had no standing to maintain their action.

Two cases decided in the 1969 SURVEY year, one at the federal and one at the state level, were reported concerning interpretations of substantive public assistance law. In *Robertson v. Ott*,⁵⁰ a three-judge federal court declared unconstitutional and permanently enjoined enforcement of the Massachusetts statute conditioning the receipt of AFDC public assistance upon residency within the Commonwealth for one year. The court noted that similar statutes in other jurisdictions were being challenged successfully and ruled that the Massachusetts statute violated federal equal protection and unconstitutionally abridged the right to travel.

In *Carroll v. Acting Director of Public Welfare of Cambridge*,⁵¹ petitioner's public assistance was terminated when income earned by her 16-year-old son living with her, less deductions of \$50 per month and certain work-related expenses, exceeded the allowable welfare budget for the family, which included Mrs. Carroll, the son and a younger daughter. The public assistance policy requiring this result was quite explicit, but petitioner raised several points, including the proposition that her 16-year-old son, had he been 18, would have received a deduction from income credited to him in excess of \$50 and that this was an obvious discrimination. The petitioner further argued that the department's policy conflicted with another rule relieving brothers of the responsibility to support sisters, and also that the required interpretation would force the son to leave the home (as he had threatened) and thus result in a disintegration of the family unit. The Supreme Judicial Court determined that it was reasonable for an 18-year-old to have greater expenses and that the state policy was in accordance with federal guidelines. The Court totally ignored petitioner's last argument.

A very interesting pronouncement in a case involving Section 24A of the general public assistance statute⁵² was handed down in *Children's Hospital Medical Center v. City of Boston*.⁵³ In that decision the Supreme Judicial Court allowed reimbursement to the plaintiff for the first of three admissions of an indigent patient to the hospital. While the Court observed that "it was good medical practice to continue the treatment at Children's which was the most convenient and logical hospital to handle the case," the Court went on to decide that the hospital knew the child was indigent at the second admission and "it would have been reasonable to refuse her admission." What is most interesting about this decision is the Court's strained use of the word "reasonable." To rephrase the Court's statement of its holding: If a person is poor it is reasonable for a hospital to turn this patient away

⁵⁰ 284 F. Supp. 735 (D. Mass. 1968).

⁵¹ 1969 Mass. Adv. Sh. 89, 243 N.E.2d 817 (1969).

⁵² G.L., c. 117.

⁵³ 354 Mass. 228, 236 N.E.2d 878 (1968).

even though it would be good medical practice and also convenient and logical for the hospital to admit that patient. Hospitals receive direct and indirect subsidies in the form of federal grants and exemption from most taxation.⁵⁴ It is amusing to contrast the same Court's agonizing sustaining of a public purpose in *Massachusetts Housing Finance Agency v. New England Merchants National Bank of Boston*.⁵⁵ Perhaps it would be best to further recast the issue by saying that, in other than cases of medical necessity, a private hospital can turn away poor patients. If the issue were so flagrantly stated, a re-examination of the grant worthiness and taxable status of such hospitals would and should be inevitable.

One final item of interest which cuts across all categories of poverty law but which is particularly germane to "public welfare law" was the enactment of Chapter 806 of the Acts of 1969. The Kerner Report⁵⁶ accurately assessed the frustration experienced by the poor in the lack of control they possess over most aspects of their lives. Since most poor people are subject to the activities of the governmental agencies that house and support them, and otherwise govern their existence, the right to access to these agencies, as well as to knowledge of their operations, seems fundamental. In Massachusetts it was formerly quite difficult to ascertain even the existence of some state agencies. Chapter 806 has relieved some of the obstacles to rectifying administrative agency nonresponsiveness. By June 30, 1970, all agency regulations not published by the secretary of the Commonwealth will be void, and future regulations and notices of hearings concerning any matter must be published in advance. Copies of these regulations must be made available to the public at cost and are required to be open to inspection at every office of the particular agency. The one problem is that enforcement is left to the office of the attorney general which usually, and sometimes justifiably, rationalizes its inertia by claims of lack of money and manpower.

§9.4. Housing. Most low income individuals and families are tenants either of substandard private housing or of physically adequate but spirit destroying public housing. The poor who do own their own homes are usually elderly and subsist on fixed incomes. They are subject to the double financial crunch of high repair and maintenance costs and soaring real property tax rates. Their legislative property tax exemptions¹ have been minimized by judicially required revaluations.²

⁵⁴ See Rose, *Hospital Admission of the Poor and the Hill-Burton Act*, 3 *Clearinghouse Rev.* 186 (Dec. 1969).

⁵⁵ 1969 Mass. Adv. Sh. 987, 249 N.E.2d 599 (1969). See §9.4 *infra*.

⁵⁶ Report of the National Advisory Commission on Civil Disorders (N.Y. Times ed. 1968).

§9.4. ¹ G.L., c. 59, §5(41).

² *Carr v. Assessors of Springfield*, 339 Mass. 89, 157 N.E.2d 880 (1959).

Any progress in establishing poor tenants' rights,³ especially in a jurisdiction where the law has been predisposed to favor landlord interests, generates benefits to more affluent tenants. However, indigent consumers of housing are helped to a greater degree because of their almost total lack of bargaining power in the grim marketplace of housing within their financial means.⁴ The ultimate — and only realistic — solution involves the construction and rehabilitation of decent low income housing in sufficient quantity, but the most optimistic federal and state programs developed to date may not even provide for replacement of housing stock currently abandoned and demolished. Stop-gap responses to the low income crisis include the adoption by Boston of rent controls⁵ and the enactment of rent review and restricted occupancy ordinances by other municipalities. The logic is vaguely Alice-in-Wonderland; if rents are artificially maintained at a fairly constant level in a period of spiraling inflation, more low income housing will be available. The rub is the inevitable disappearance of moderate and middle income housing. After all of the rhetoric dissipates, the crux of the matter can be seen as one of governmental priorities, but this, unlike tenants rights and remedies, is political and not legal.

In fact, 1968 and 1969 were banner legislative years for tenants in Massachusetts. One bill banned lockout clauses in all prospective residential rental agreements.⁶ Another declared illegal lease provisions allowing landlords to enter a tenant's premises except under very limited circumstances.⁷ Contained in this latter bill, also applied prospectively, was a prohibition on security deposits in excess of two months' rent, which arguably applies to all rental agreements. However, the abuse of the unscrupulous landlord who makes a practice of retaining security deposits was not legislatively cured. One solution to this problem would be to establish a speedy arbitration remedy when a security deposit is withheld by a landlord.

Other significant legislation was contained in this same bill. Expenses levied against a tenant who locks himself out of an apartment were restricted to out of pocket reimbursement.⁸ Also, landlords were forbidden to impose interest on, or a penalty for, rent arrears until 30 days have elapsed.⁹ This statute provides some relief where special charges and penalties are imposed upon public housing tenants, who can least afford to pay them.¹⁰ The Ping-Pong ball of allowable stays

³ See Garrity, *Re-designing Landlord-Tenant Concepts for an Urban Society*, 46 J. Urban L. 695 (1969).

⁴ See Symposium, *Housing: Part I: Perspectives and Problems*, 32 Law & Contemp. Prob. 187 (1967).

⁵ Boston, Mass., Ordinances c. 10 (Nov. 21, 1969).

⁶ Acts of 1969, c. 115.

⁷ Acts of 1969, c. 244.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ See Comment, *Fires in Public Housing*, 68 Colum. L. Rev. 1538 (1968).

of execution after eviction for other than nonpayment of rent has bounced back to six months after its low level of three months,¹¹ and waivers of eviction notices have been declared void. The summary aspect of summary process has been mitigated for poor tenants by legislation which provides for the waiving of appeal bonds after eviction where the tenant is indigent and where the court is satisfied the defense presented is not frivolous.¹²

A very valuable weapon in the arsenal of attorneys representing tenants living in substandard housing in Massachusetts has been the statutory scheme of rent withholding originally enacted in 1965. Although this legislation was and still is quite radical, some militants have progressed beyond the "legal rent strike," which accurately summarizes the Massachusetts legislation, and have resorted to building take-overs and "squat-ins." These latter tactics, however, are employed to demonstrate the need for, and in some instances actually to obtain, more housing rather than to dramatize the pressing need for the rehabilitation of existing housing.¹³

The original Massachusetts legislation involves three tenant remedies which have been pursued with little success without statutory authorization by legal services attorneys in other jurisdictions. The first remedy creates a defense to summary process for nonpayment of rent;¹⁴ the second, commonly called "rent escrow," allows a tenant to petition a district court to receive and hold rent moneys which it would then release to a landlord for repairs;¹⁵ and the third, "rent receivership," involves appointment of a receiver by the superior court to manage and to rehabilitate substandard premises.¹⁶ All of these remedies are somewhat involved and, when first utilized by tenants' organizations which proceeded without the assistance of counsel, led to evictions whenever there was a failure to comply technically with the statute.¹⁷

One of the more valid criticisms of this statutory scheme has been the susceptibility of tenants using it to retaliation by enraged landlords.¹⁸ When one of these proceedings has been filed in court the tenant is afforded relief from unwarranted eviction,¹⁹ but some landlords, when the precondition of a complaint of unsafe or unsanitary

¹¹ Acts of 1969, c. 365, and Acts of 1969, c. 115. For an extensive discussion of summary process, see §5.7 *supra*.

¹² Acts of 1969, c. 366. See *Williams v. Shaffer*, 385 U.S. 1037 (1967).

¹³ See Bay State Banner, Jan. 15, 1970, at 1, col. 3.

¹⁴ G.L., c. 239, §8A.

¹⁵ G.L., c. 111, §127F.

¹⁶ G.L., c. 111, §127H.

¹⁷ Interview with Paul Newman, attorney, Community Legal Assistance Office, Cambridge, Mass., Nov. 25, 1969.

¹⁸ See Comment, Retaliatory Evictions and the Reporting of Housing Code Violations in the District of Columbia, 36 Geo. Wash. L. Rev. 190 (1967).

¹⁹ Acts of 1968, c. 404, §1.

premises is lodged against them with an office of housing inspection, retaliate against a tenant by evicting or by raising his rent.²⁰ The General Court has comprehensively and effectively penalized this practice.²¹ Retaliation, where proven, is established as a defense to summary process, and tenants who are so victimized are allowed to institute a private action for damages, with a minimum recovery of one month's rent and counsel fees. The new statute also deals with the probabilities by imposing the burden on the landlord by way of a rebuttable presumption to prove his action was not retaliatory where an eviction or increase in rent occurred within six months of the tenant's report of violation of occupancy standards to an office of housing inspection. One possible problem of interpretation is whether the six month presumption creates a quasi-statute of limitations, but the legislation contains no mention of the tenant's cause of action lapsing after six months. The statute also appears to create a *de facto* situation of prohibiting for six months the eviction of, or an increase in rent to, a tenant who reports his landlord to a local housing inspection agency. Also, while the statute refers to a defense to summary process in broad terms, it would seem that a tenant might still be evicted for nonpayment of rent unless, perhaps, he withholds his rent and housing code violations exist. In such a case it could be argued (assuming notice to a housing inspection agency) that the tenant falls within the protection of the rent withholding statute despite his noncompliance with its technical notice requirements.

Some of these same technical requirements of rent withholding were mitigated by the enactment of a bill allowing rent withholding by a tenant as a defense to summary process after written notification to a landlord of the housing violations by an office of housing inspection.²² Previously, the tenant himself was required to furnish written notice to a landlord of his intent to withhold rent and the reasons for the withholding. Also, it was necessary that the tenant be up to date in his rental payments. The amendment to the statute raises some doubt whether all of these requirements, and especially notification of intent to withhold rent, continue. In another enactment, to remove any dispute concerning the issue, any agreement waiving the benefits of rent escrow or receivership was declared void by the legislature.²³

Rent escrow has been simplified by allowing its use within 24 hours after a tenant request for a housing inspection is submitted to the responsible public agency.²⁴ Unfortunately, however, the amendment is silent as to whether the tenant request may be oral or need be in writing. For some unknown reason, the receivership provision was not

²⁰ The leading case condemning this practice is *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1967).

²¹ Acts of 1969, c. 701.

²² Acts of 1969, c. 855.

²³ Acts of 1968, c. 404, §2.

²⁴ Acts of 1969, c. 242.

similarly amended. Moreover, the precondition to successful rent receiverships, that is, appropriation of moneys to the revolving fund in the Department of Public Health, again died in committee.²⁵ The typical receivership situation involves repairs requiring more than current or immediately realizable rents, and the 1965 legislation contemplated a revolving fund which has never received appropriations. Can the poor be faulted for their cynicism when promises made are never fulfilled?

Late in 1969, a comprehensive housing and urban renewal bill, Chapter 751, was enacted. This legislation, aside from some administrative reshuffling, constitutes a recodification of existing provisions. Section 32 of Chapter 751, which regulates the operations of low rent housing projects, differs in but minor respects from the statute it superseded. As formerly, housing authorities are mandated to lease accommodations only "within the financial reach of persons and families of low income," but "low income" is still not defined. Housing projects are to be operated with rentals fixed at the "lowest possible rates," but these same rentals — although subsidized to some extent — must produce revenue sufficient to pay the principal and interest on bonds, insurance, reimbursements to municipalities in lieu of taxes, statutory reserves, and recreational and community facilities. Federal and state subsidies are usually pegged to permit welfare recipients to live in public housing, and there often occurs a situation in which the wage earner whose salary falls below public assistance benefit levels is financially unable to pay the minimum rentals required to operate public housing. Moreover, elderly public housing tenants, whose income is disgracefully low, must allocate a disproportionately high percentage of their income to rent payments. It seems inconsistent with the concept of low income public housing for such housing to be beyond the reach of the very poor, and perhaps repeal of reserve requirements and payments in lieu of taxes would improve matters. An alternative solution would be to increase subsidies and to peg rentals at a reasonable percentage of income.²⁶

Section 32 continues the discretion allowed to housing authorities in computing continued tenant eligibility to exclude either \$100 of a minor's annual income or any or all of that income. The \$100 exclusion of a minor's income for a family's initial eligibility for occupancy also remains a part of the statute, and a bill submitted to abolish this requirement and to exclude all of their income in the case of students and minors was referred to study in the 1969 session.²⁷ With low income housing in such short supply, any discretion, especially financial, entrusted to public housing administrators can lead to serious abuses. Moreover, minors, particularly if they are students, should not be re-

²⁵ See Law Reform Newsletter 31 (Oct. 1969).

²⁶ Such a proposal is currently before the Congress.

²⁷ See Law Reform Newsletter 31 (Oct. 1969).

quired to leave the family home — a result which may in fact occur — when their earnings are added in computation of the family's eligibility for public housing.

Aliens, unless honorably discharged from military service or eligible for old age assistance, continue to be denied public housing in a manner which seems to defy visceral notions of equal protection.²⁸ Preferences for selection of public housing tenants remain as before. It would seem that the concept of "first come, first served" should by now have been included in the legislation, with exception for such rational preferences as extended to those displaced by urban renewal. Bills requiring the publication of both eligibility standards and the posting of waiting lists for public housing were referred to study.²⁹ A bill limiting the reasons for denial of admission to public housing was also referred to a study committee.³⁰ Either by oversight or by design, the philosophy of participation by tenants in housing project management with a view toward ultimate ownership by tenants was not included in Chapter 751. However, the philosophy that there is a place for tenants on the boards of housing authorities was impliedly, albeit negatively, recognized by a bill prohibiting their voting in matters affecting their own interest.³¹

Bills forbidding evictions from public housing except for cause and mandating collective bargaining between housing authorities and tenant organizations, both originally enacted in 1968, were retained. "Cause" for eviction is not defined, perhaps because of a legislative hope that the proper purview of the term could be worked out during a management-tenants' organization negotiating process.³²

Most grievances of public housing tenants usually center around the very one-sided leases they are required to execute before occupancy is allowed. Almost all of these leases are from month-to-month and regulate the terms and conditions of occupancy in detail. It would have been beneficial had the General Court given some thought to legislating a model lease with terms relating to purely local conditions left to bargaining between the parties. A further oversight, which the authors have brought to the attention of the appropriate legislative committee, was the inadvertent repeal of a bill passed a month prior to Chapter 751's enactment which required housing authorities to contract with municipalities for police protection for the tenants.³³ This bill was designed to remedy the situation which existed in certain localities where police declined jurisdiction over the property of housing authorities. A far stronger bill is being drafted to require a night

²⁸ Acts of 1969, c. 751.

²⁹ Law Reform Newsletter 32 (Oct. 1969).

³⁰ *Ibid.*

³¹ Acts of 1968, c. 271, §1.

³² See Comment, Nonfinancial Eligibility and Eviction Standards in Public Housing — The Problem Family in the Great Society, 53 Cornell L. Rev. 1122 (1968).

³³ Acts of 1969, c. 630.

policeman on duty in projects containing more than 200 units. In the past, some legal services attorneys had doubt as to whether housing inspection codes applied to public housing projects. This should not have been the case since Section 26S of Chapter 121, now recodified as Section 28 of Chapter 121B, was and is quite explicit in this regard.

On the next to last day of the 1969 legislative session, the much publicized so-called "anti-snob" zoning bill was passed.³⁴ While this statute itself does not authorize the construction of housing, it certainly facilitates such construction. The thrust of this very important legislation is to generate increases in housing for low and moderate income tenants and to deghettoize the inner-city by scattering housing available to its residents. The bill furnishes mechanisms for overriding suburban practices which obstruct the construction of low and moderate income housing. Also, local red tape, while not completely eliminated, has been greatly lessened.

As significant as was the legislation enacted in 1969, several other important housing bills were either killed or referred to study and most likely obscurity. Proposed legislation to establish an implied warranty of fitness in the leasing of residential housing and to create tort liability for landlords where they fail to provide essential services failed of enactment.³⁵

In usual contrast, very little happened litigatively. Whether this results from failure by litigants to pursue appellate remedies for various reasons, or from the sad fact that the Commonwealth has but one court of record, is academic. This situation is appalling considering the size of Massachusetts and the complexity of its institutions. Advocates for the poor receive very little judicial guidance in the Commonwealth.

In *Massachusetts Housing Finance Agency v. New England Merchants National Bank of Boston*,³⁶ several banks refused to purchase, as agreed, notes issued by the plaintiff (MHFA) to finance multi-dwelling housing. MHFA had been established in 1966 to provide mortgage financing at "favorable" rates for the construction of housing projects in which approximately one quarter of the tenants would be low income and the others classified as moderate income. The defendant banks contended, among other things, that providing benefits to moderate income families was not a public purpose and relied on an earlier advisory opinion of the Supreme Judicial Court to that effect. The Court decided otherwise, noting that its advisory opinions are "open to reconsideration and revision." It brushed aside discussion of the social desirability issue, finding it to be within the competence of the legislature to determine that the mixing of families of economic means will provide for the prevention and permanent elimination of slums,³⁷ and

³⁴ Acts of 1969, c. 774. For an extensive discussion of this statute, see §14.1 *infra*.

³⁵ Law Reform Newsletter 32 (Oct. 1969).

³⁶ 1969 Mass. Adv. Sh. 987, 249 N.E.2d 599 (1969). See also, §10.1 *infra*.

³⁷ MHFA notes are exempt from Massachusetts property and income taxes and

that it was explicit and implied in the legislation setting up the MHFA that substantial benefits would inure to low income families, benefits to those of moderate income being but incidental.

Two housing discrimination cases were also decided in the 1969 SURVEY year. In *LaPierre v. Massachusetts Commission Against Discrimination*,³⁸ a case involving refusal to negotiate in good faith in respect to the renting of an apartment, the Supreme Judicial Court construed the term "national origin" as including those of Puerto Rican ancestry. The second decision involved construction of Chapter 151B, the antidiscrimination statute, which has been construed to apply to all rentals of dwelling accommodations except where, in the case of single or two-family housing, the lessor advertises the availability of an apartment by word of mouth. This loophole has been closed by the decision in *Harris v. Jones*,³⁹ where the court quoted extensively from *Jones v. Alfred H. Mayer Co.*⁴⁰ Judge Caffrey in *Harris* dismissed a claim for damages both as de minimus and as not proven. However in a later decision, *Pina v. Homsy*,⁴¹ damages were awarded for unlawful discrimination in renting a dwelling, an issue which was not adjudicated in *Jones v. Alfred H. Mayer Co.* Thus, it seems that all bases have been touched in effectively prohibiting rental discrimination.

§9.5. Education. The increased radicalization of ghetto residents has led them to vocalize their growing recognition of the inferior education that their children are receiving.¹ That ghetto schools are in fact educationally inferior has been amply demonstrated, and much is being done on both the federal and state levels to equalize educational opportunities for minorities.² Federal enrichment programs such as Project Headstart and revolutionary ventures such as an experimental tuition voucher plan are currently being implemented in low income areas.³ On the state level, the Committee for Community Educational Development has received funding from both the Commonwealth's Department of Education and the Ford Foundation to conduct an experimental school in the Roxbury area.⁴

The Roxbury community has pointed out that the only way in which it can achieve both the quality and curriculum reform in education which it desires is for neighborhoods to achieve some control of schools

also from federal income taxes. MHFA may therefore borrow and lend at lower rates.

³⁸ 354 Mass. 165, 236 N.E.2d 192 (1968).

³⁹ 296 F. Supp. 1082 (D. Mass. 1969).

⁴⁰ 392 U.S. 409 (1968).

⁴¹ Civil No. 69-666-G (D. Mass., decided July 9, 1969).

§9.5. 1 The legal services program of the OEO has also become involved by funding a Center for Law and Education jointly sponsored by Harvard's Law School and Graduate School of Education. The center's prospectus notes that it serves as a backup center to OEO legal services offices and also tries to aid other groups interested in educational reform. See 3 Clearinghouse Rev. 159 (Nov. 1969).

² See J. Coleman et al., *Equality of Educational Opportunity* (1966).

³ Interview with Christopher S. Jenks, co-director, Cambridge (Mass.) Institute, in Boston, Dec. 9, 1969.

⁴ Bay State Banner, Nov. 27, 1969, at 1, col. 3.

within their boundaries. It was this desire which led to the short-lived community take-over at the Gibson School in Roxbury in the fall of 1968 when a group of parents led their children from a public school building into a "freedom school" which they had designed and controlled.⁵ The result of cries for community control of education such as were heard at the Gibson School in Boston and in the Ocean Hill-Brownsville district of New York City⁶ has been that community participation is becoming recognized as a necessary part of the educational system in ghetto neighborhoods. Federal funding is now available for community groups that wish to become involved in this process. In Roxbury, federal moneys were obtained by the King-Timilty Advisory Council, an elected community group which has negotiated with the Boston School Committee regarding such essential issues as the school committee's hiring practices for administrative and staff positions.⁷

Along with community control, residents have demanded a share of the political control of the Boston school system. One attempt to achieve this necessary political control occurred when *Owens v. School Committee of Boston*⁸ was filed requesting the federal district court to invalidate the at-large election of the Boston School Committee. The request was filed on the grounds that although petitioners—black children who attended the Boston schools, and their parents in the dual capacity of parents and voters—constitute a significant racial minority, the effectiveness of their franchise has been diminished by the at-large system of election and the consistently unfavorable white voting pattern which has resulted. Petitioners claimed that this dilution of their voting strength constitutes a denial of rights protected by the Fourteenth and Fifteenth Amendments to the United States Constitution. The petitioners requested a preliminary injunction to prohibit an impending at-large election and proposed as an alternative a district method of election. The motion for an injunction was denied on two grounds. The court initially held there was no constitutional duty requiring a city using an at-large election system to adopt a district system "in order to better the chances of a minority group to secure representation of their own particular interests."⁹ The court also felt that to enjoin the forthcoming election would harm the city of Boston by "placing it in a position where it would be without any properly constituted authority to operate its schools."¹⁰

⁵ Interview with C. Grayson, a Roxbury teacher, in Boston, Dec. 10, 1969. Litigation arising from this event will be argued before the Supreme Judicial Court in March 1970.

⁶ See M. Hell and A. Hevesi, *The Politics of Urban Education* (1969), for a superb analysis of the New York City school crisis in 1967 and 1968. For a legal perspective, read Comment, *School Decentralization: Legal Paths to Local Control*, 57 *Geo. L.J.* 992 (1969).

⁷ *Bay State Banner*, July 10, 1969, at 1, col. 3.

⁸ 304 F. Supp. 1327 (D. Mass. 1969).

⁹ *Id.* at 1329.

¹⁰ *Id.* at 1331.

There has been much recent litigation contesting the unequal treatment accorded ghetto residents attending schools, usually in Boston, in their own neighborhoods. One such case was *Barclay v. Connors*.¹¹ The issues in *Barclay* concerned public school children who had been placed in special classes based upon performances in intelligence tests which were indisputably biased against them because of cultural and socio-economic factors inherent in the test. A complaint was filed by the parents with the Commonwealth's Department of Education. The parents stated they had not been informed that their children were to be placed in these special classes, nor were they notified of their rights to appeal such a decision. The case was settled when a comprehensive agreement was reached with the Department of Education regarding the procedures to be utilized in determining when children should be placed in special classes. The agreement provided that all parents must be notified of the decision to place their children in such classes, which right includes review of the decision and the rights to be represented by an attorney, to examine all school records concerning the child, and to introduce testimony of expert witnesses as to the child's capacities. Finally, the Department of Education was convinced to begin a thorough review of previous placements into special classes to discover if erroneous prior placements had been made.

Another area in which there has been an unequal distribution of educational facilities has been in the provision of school lunches under the National School Lunch Act.¹² That act requires a local school system to make free school lunches available to those children who are the most economically and nutritionally needy before free lunches are provided for other students. During the 1968-1969 school year, although free lunches were available at 46 of 47 junior, middle and high schools, students at only 9 of 156 elementary schools had participated in the program. In *Briggs v. Kerrigan*,¹³ the federal district court held that the failure to make free school lunches available to younger students, who often have greater economic and nutritional needs than some of the older school children who have been receiving these lunches, was not in violation of the act.

The open enrollment policy of the Boston public schools, which permits students to attend any school in the city school system which has unfilled seats after all children from the local district have been enrolled, has somewhat alleviated the disparity in the quality of education found in different areas of the city. However, once ghetto students have enrolled in schools in other neighborhoods there is no guarantee that they will be treated fairly at the local school. In one case, *Owens v. Devlin*,¹⁴ petitioners, four Roxbury residents who had enrolled in a Brighton junior high school, and were summarily ex-

¹¹ Law Reform Newsletter 7 (Oct. 1969). The leading case in this area is *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967).

¹² 42 U.S.C. §§1751-1761.

¹³ 38 L. W. 2370 (Jan. 6, 1970).

¹⁴ Law Reform Newsletter 9 (May 1969).

pelled, sued for readmission. The defendant Brighton school principal contended that it was within the local school's discretion to expel students from other than the local area. The court granted a temporary injunction which required the local school to readmit the students. The case was further resolved when the Boston School Committee agreed to amend its rules to provide minimum standards for the suspension or transfer of students. The amended rule now provides that no student may be transferred or suspended from school for more than ten school days without adequate notice and hearing.¹⁵

The increased activism of ghetto residents regarding schools has extended to the students themselves at the high school as well as the university level. Both groups of students have been involved in demonstrations protesting the quality and relevance of the education they are receiving. The disruption of classrooms with attendant violence has led the General Court to prescribe mandatory imprisonment for persons who "willfully and repeatedly" cause school disturbances.¹⁶ In the same legislation, the penalty for criminal trespass was increased from a fine of \$20 to \$100, thereby imposing a pecuniary loss as well as threat of imprisonment for such action.¹⁷ Section 123 of Chapter 266 was also amended to prohibit trespassing upon the land belonging to a public institution of higher learning.¹⁸ If the trespasser remains on such land after being requested to leave by an officer of the institution, he is subject to being punished by fine or imprisonment. Finally, a desire to minimize the possibility of violence occurring during college or university demonstrations led the legislature to make the possession of a firearm on university grounds a criminal offense.¹⁹

§9.6. Employment. Lack of adequate employment opportunities is often cited as a primary cause of poverty.¹ This lack of jobs for ghetto residents results in large part from discrimination. Discrimination in employment is double edged since it includes both racial bias and discrimination against all poor, regardless of their race, based upon lack of marketable skills.² In the past two years there have been numerous attempts made to end both of these forms of discrimination.

In an effort to combat discrimination against the unskilled, which, although not overtly racial, has racial effects, Chapter 151B of the General Laws was amended to prohibit an employer from refusing to hire a potential employee because of that person's failure to furnish information regarding his arrest and conviction for a misdemeanor, if the misdemeanor had occurred ten or more years previously and if the

¹⁵ Ibid.

¹⁶ Acts of 1969, c. 463, §1.

¹⁷ Id. §2.

¹⁸ Acts of 1969, c. 362.

¹⁹ Acts of 1969, c. 441.

§9.6. ¹ The leading work in this area is A. Ross and H. Hill, *Employment, Race, and Poverty* (1967).

² Ibid.

individual had not been given a prison sentence.³ In the past, employers' requirements for disclosure of this information had tended toward discrimination against residents of ghetto areas, where many factors combine to bring about a high incidence of juvenile delinquency. Now, errant actions as a juvenile may no longer impair the career of one who has matured into a responsible and potentially productive member of society.

Another legislative change in the employment discrimination area was the amending of Chapter 151B to provide a clear exemption for religious or denominational groups from its strictures.⁴ Any such group which is "operated, supervised or controlled by or in connection with a religious organization, and which limits membership, enrollment, admission, or participation of members of that religion" may, without violation of the state's antidiscrimination law, give preference in hiring and employment to members of that religion. Although this amendment does appear to be a deviation from the legislature's previously announced policy against discrimination in employment, before it is condemned it must be weighed against another and an equally valid policy, i.e., the preservation of the religious life of citizens of the Commonwealth. When these two policies appear to conflict, it may be argued that it is better to allow the hiring practices that religious organizations have adhered to since their formation to be legally permitted. This provides for the continued vitality of such religious organizations, and the numbers of employees are so few that this exemption will have little effect on the job picture as a whole. The contrary argument is obvious.

Most cases involving employment discrimination are not brought to court but rather are heard and decided by the Massachusetts Commission Against Discrimination, which is empowered to provide an appropriate remedy.⁵ As the commission acts as a judicial body and its decisions are binding as precedent, its written opinions are valuable to both attorneys and potential claimants and should be available for their perusal. In recognition of this need for publication, the legislature has amended the statute defining the duties of the commission to provide that copies of their opinions must be maintained in the commission's office and be available for public inspection during regular business hours.⁶

There has also been some litigation in the employment area filed by legal services attorneys. One such action dealing with retaliatory termination, *Luce v. Boston Redevelopment Authority*,⁷ has been filed in the federal district court to protest the refusal of the Boston Redevelopment Authority (BRA) to employ the plaintiff, who is a Catholic priest.

³ Acts of 1969, c. 314.

⁴ Acts of 1969, c. 216.

⁵ G.L., c. 151B, §3.

⁶ Acts of 1968, c. 218.

⁷ Law Reform Newsletter 3 (May 1969).

The plaintiff had previously been employed by United South End Settlements (USES), a private organization which had contracted with BRA to provide relocation services in the South End urban renewal area. When the contract between the BRA and USES ended, plaintiff sought employment with the BRA's relocation department. His application was at first accepted but later disallowed. He alleged that the BRA refused to hire him because of statements he had made disparaging the BRA's relocation policy. He claimed that the BRA's retaliatory action in refusing to hire him deprived him of his right of free speech and his rights to assemble and petition government for a redress of grievances and to freely practice his religion. The BRA filed a motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure.⁸

In the area of employment discrimination a class action was filed against the Massachusetts Bay Transportation Authority on behalf of 76 trainees of the Opportunities Industrialization Center (OIC) and 225 other black and Spanish-speaking applicants for the position of bus driver-collector.⁹ They protested the MBTA's hiring on the basis of scores achieved on general aptitude tests. The action was begun when only 16 of 76 black and Spanish-speaking applicants who had participated in an MBTA-sponsored training program for the job of bus driver-collector passed the test. This represented a 79 percent rejection rate for blacks and Spanish-speaking applicants, as compared to a 22 percent rejection rate for whites. Plaintiffs sought to enjoin the MBTA from

. . . using as a criterion for hiring the general aptitude tests or any other test which had not been properly validated as a predictive of or significantly correlated with important elements of work behavior, comprising or relevant to the specific job of driver/collector, and on the basis of a sample of subjects representative of the multi-racial potential employee source in the Boston area.¹⁰

Petitioners sought to require the MBTA to change its present hiring practice and to institute a system where one black and one white employee would be hired alternately as vacancies arise until the racial composition of the MBTA's workers was equivalent to the racial composition of the city of Boston. Judge Garrity, speaking for the court, agreed with the petitioners that there was no relationship between an applicant's score on the general aptitude tests and his ability to perform the job for which he had applied. The court felt that when the effect of such a test "is to discriminate against disadvantaged mi-

⁸ This motion was denied, and this is the status of this case at this writing. 3 Clearinghouse Rev. 198 (Dec. 1968).

⁹ *Arrington v. Massachusetts Bay Transportation Authority*, Civil No. 69-681-G (D. Mass., filed Dec. 22, 1969), memorandum and order denying preliminary injunction.

¹⁰ Law Reform Newsletter 3 (July 1969).

norities, in fact denying them an equal opportunity for proper employment, then it becomes unconstitutionally unreasonable and arbitrary.¹¹ The injunction was denied, however, for lack of an appropriate and equitable remedy. An injunction which would give preferential treatment to the remaining blacks on the list would do so "at the expense of the remaining whites who, far from being beneficiaries of previous discriminations, may well be just as much the innocent victims of a system of hiring that hinders the culturally disadvantaged."¹²

In recent months increased attention has been given to the failure of unions, especially construction unions, to allow blacks membership. Membership in most construction unions is based either upon family relationship or union evaluation of the applicant's fitness for membership, utilization of both of which standards can result in discriminatory practices. Many methods have been tried to encourage unions to change their admission policies. These range from on-site picketing on construction sites in several cities,¹³ to the so-called Philadelphia Plan. The Philadelphia Plan, recently passed by Congress, requires contractors bidding on federally aided projects costing \$500,000 or more to increase the number of blacks among their total employees from about 5 percent to approximately 25 percent within the next five years.

In contrast to the legislative and litigative remedies possible to correct abuses in the area of racial bias, discrimination against the poor because of their lack of employable skills can best be solved by training programs. During the past few years many manpower programs have been instituted at the federal level.¹⁴ Their success has been varied. Many of these programs have succeeded in teaching the ghetto resident a needed trade only to have him find that there is no industry in the depressed area in which he lives where he can put his new skill to work. It is not enough, therefore, merely to train potential workers. Industry must be developed so that these workers will be assured of an opportunity to use that training. This realization has led both government officials and private foundations to increased emphasis of the program of black economic development.

§9.7. Black economic development. Black economic development is viewed as one method of ameliorating the increased polarization between blacks and whites by allowing the black community to obtain an increased share of the national wealth.¹ This view has led to a series of programs encouraging potential minority group entrepreneurs to

¹¹ *Arrington v. Massachusetts Bay Transportation Authority*, Civil No. 69-681-G, at 6.

¹² *Id.* at 10.

¹³ Interview with Martin Gopen, employment specialist, New Urban League of Boston, in Boston, Dec. 2, 1969.

¹⁴ *Job Development for the Hard to Employ*, MDTA Findings No. 4 (U.S. Dept. of Labor, June 1968).

§9.7. ¹ The most comprehensive study of this area is contained in *Black Economic Development* (W. Haddad and G. Pugh eds., 1969).

establish their own businesses. The types of programs which have arisen range from the Small Business Administration's Economic Opportunity Loan Project,² which finances black capitalists, to OEO funding for community development corporations (CDC), which seek to involve entire ghetto communities as participants in industrial efforts.³ The theory is that, once CDC's are established and operating, profits may be spun off for community betterment enterprises. The concept of the community development corporation arose from the proposed Community Self-Determination Act,⁴ introduced before Congress in 1968. Although the status of this bill is uncertain at this time,⁵ many CDC's have nevertheless been formed with government and foundation financing.

The proponents of black capitalism feel that what is needed is for minority group members to be given incentives which will enable them to enter the mainstream of the American capitalist system and compete in the open market. The advocates of community-based economic development ventures view black capitalism as exploitative and argue that conditions and institutions make it impossible for the black people to enter the capitalist system; rather, it is felt, they must develop their own economic structures, which will respond directly to the needs of the entire black community.

Big business has responded to demands for black economic development by joining in a partnership with black entrepreneurs to initiate the operation of subsidiary businesses.⁶ An example of this arrangement is the Avco plant in Roxbury which, at the prodding of government, has recently been established.⁷

All this activity has had considerable impact on the Roxbury community. Since 1967, there have been 147 economic opportunity loans extended by the Small Business Administration, and, most significantly, not one default has occurred to date.⁸ Statistics such as these have led many to believe that economic development is perhaps the most promising solution currently available to reduce the grinding poverty found in inner-city neighborhoods.

There are, however, two major stumbling blocks to most current economic development efforts. First, many prospective entrepreneurs do not have the training and skills necessary to be successful in business.⁹ In order for this difficulty to be overcome it is necessary that the

² 42 U.S.C. §§2901 et seq.

³ See Desiderio and Sanchez, *The Community Development Corporation*, 10 B.C. Ind. & Com. L. Rev. 217 (1969).

⁴ See Miller, *Community Capitalism and the Community Self-Determination Act*, 6 Harv. J. Legis. 413 (1969).

⁵ *Ibid.*

⁶ See generally E. Ginzberg, *Business Leadership and the Negro Crises* (1968).

⁷ *The Boston Globe*, Aug. 2, 1969, at 32, col. 2.

⁸ Interview with Aubrey Barrette, minority loan officer, Small Business Administration, Roxbury office, in Boston, Oct. 9, 1969.

⁹ See Garrity, *How Law and Graduate Business Students Can Help*, 25 Bus. Law. 201 (1969).

manpower training programs discussed earlier be coordinated with economic development ventures to structure that type of training which will be useful to both the potential employee and to the prospective entrepreneur. Second, there is an appalling scarcity of equity capital in ghetto communities.¹⁰ There are few ghetto residents who have been able to marshal the necessary venture capital to establish businesses. If black economic development is to become successful on an even larger level than it is currently achieving, lending institutions will have to lower their requirements for extending equity capital in situations involving minority entrepreneurship, or private foundations will have to demonstrate more willingness than they have previously manifested to supplement loans by banks.

§9.8. Municipal services. Residents of low income neighborhoods have increasingly come to feel that they are not receiving their fair share of municipal services when they contrast their environment with conditions beyond the city limits.¹ Their main grievances are that less money per pupil is spent for inner-city schools than for suburban schools, that community recreational facilities are in a state of extreme disrepair, and that ghetto trash collection is both infrequent and poorly performed. It has been suggested that inner-city residents could argue that this discriminatory treatment violates equal protection rights, but as of this date no litigation along these lines has been attempted in Massachusetts.²

A somewhat subtle municipal services issue which has yet to be presented before a court, but which perhaps should be litigated, is the inequality of services existing among various city districts.³ For example, although unintentional, it seems to be discriminatory to provide a two-foot sewer pipe for the approximately 10,000 residents of a medium income city district while allowing a four-foot sewer pipe to clog continually in a ghetto area which has 80,000 inhabitants. Does equal protection entitle citizens only to the same amount of sewer pipe in every section of the city, or does it extend to mandating the supplying of the same amount of sewer pipe per citizen? This sewer pipe example could be replicated to cover such other services as trash collection, police and fire protection and school and recreational facilities. If such an argument were to be successful, it would result in a total restructuring of existing concepts of provision of municipal services.

Municipal services involves not only the provision of physical facil-

¹⁰ See Sturdivant, *The Limits of Black Capitalism*, 47 *Harv. Bus. Rev.* 122 (Jan. 1969).

§9.8. ¹ The seminal article in this area is Ratner, *Inter-Neighborhood Denials of Equal Protection in the Provision of Municipal Services*, 4 *Harv. Civ. Rights-Civ. Lib. L. Rev.* 1 (1968).

² Litigation is being prepared, however. Interview with Michael Feldman, attorney, Massachusetts Law Reform Institute, in Boston, Nov. 4, 1969.

³ See generally Ratner, *Inter-Neighborhood Denials of Equal Protection in the Provision of Municipal Services*, 4 *Harv. Civ. Rights-Civ. Lib. L. Rev.* 1 (1968).

ities but also the delivery of social services to the community.⁴ Realizing the importance of such social services to the low income neighborhoods, the General Court in 1968 established the new state Department of Community Affairs.⁵ This department was created with the mandate to “mobilize the human, physical, and financial resources available to combat poverty and provide economic training and open housing opportunity. . . .”⁶ To accomplish these goals the department is authorized to provide technical assistance to community groups needing and desiring social service resources.

There have been several additional attempts to make municipal services more responsive and meaningful to low income citizens and also to give them an opportunity to participate in the governmental process. One manifestation of this trend was the amendment of the Commonwealth’s civil service law to allow the exempting of up to 30 employees of a Model Cities Program from qualifying for their positions under civil service requirements.⁷ This was done in order to permit Model Cities’ agencies to employ residents of the neighborhoods for appropriate positions.

Another such phenomenon has been the institution of “little city halls” in neighborhoods within the city of Boston.⁸ They serve as decentralized sites for filing complaints and disseminating information and also allow city government the opportunity to become aware of grassroots sentiment and opinions within the various disparate communities which constitute the city of Boston.

Perhaps the most effective method to achieve governmental responsiveness is to relieve the political impotency of inner-city neighborhoods by increasing their voting power. However, within the last two years, in only one out of three instances where this approach was tried was it successful. In *Dinis v. Harrington*,⁹ the federal district court declared the apportionment of the city of New Bedford to be in violation of the “one man, one vote” principle as announced by the Supreme Court in *Avery v. Midland County*.¹⁰ The court ordered the city to come up with a new plan which would “redistrict the voters into wards in which each voter has, as nearly as practical, an equally effective voice in the election process.”¹¹ Chapter 424 of the Acts of 1965, which prohibited any city officials from redistricting voting areas until 1974 insofar as such a redistricting would restrict the ability of the relevant officials to carry out required reapportionment, was determined to be unconstitutional.

⁴ See Jones, Overview of Services to Individuals and Families, in *Individual and Group Services in the Mobilization for Youth Experience* 25 (H. Weissman ed. 1969).

⁵ Acts of 1968, c. 761.

⁶ *Id.* §3.

⁷ Acts of 1968, c. 603.

⁸ *The Boston Globe*, June 14, 1969, at 11, col. 2.

⁹ 283 F. Supp. 411 (D. Mass. 1968).

¹⁰ 390 U.S. 474 (1968).

¹¹ *Dinis v. Harrington*, 283 F. Supp. at 412.

The opposite result was reached by the Supreme Judicial Court in a case involving the reapportionment of multi-seat legislative districts. In *Newman v. Commissioners to Apportion Suffolk County*,¹² petitioners, registered voters of Ward 4 in Boston, sought a writ of mandamus to force the commissioners to designate Ward 4 as a separate district with one representative. The petitioners based their claim primarily on the general language of the apportionment statute, which provides that "each voter's representative . . . will represent an equal number of legal voters as nearly as may be."¹³ The statistics which were introduced by the petitioners demonstrated that districts with similar population density had been designated as single representative areas. The Court found that despite the facts the commissioners could have constitutionally permitted Ward 4 to be a single member district, and although there may have been some inconsistency in their performance in apportioning Ward 4 as compared with some other wards, their actions were all within their discretionary powers. "The apportionment process," the Court declared, "is primarily a matter for legislative consideration. If the process has been carried out reasonably and without arbitrary conduct, this Court has not interfered with the judgment of those entrusted with the task by the Legislature. . . ."¹⁴ The Court found, therefore, that the facts at hand did not represent a violation of the commissioners' discretionary powers.

The federal district court reached the same result as the Supreme Judicial Court in *Owens v. School Committee of Boston*,¹⁵ a case discussed previously, which also involved multi-member districting, this time the district comprising the entire city of Boston. *Owens* involved a challenge to the at-large system of electing members of the Boston School Committee. Petitioners, bringing suit on behalf of all the black citizens of Boston, claimed that under the system at issue they were not able to elect a member of their race to the school committee. They argued that since the black community was segregated into one central district within the city, if the electoral system were divided into single member districts, they might be able to command sufficient votes in one district to elect a representative responsive to their interests. The court held that, where there is no showing of an affirmative discriminatory practice, "a City which has for a long time and for sound reasons used the at-large system [need not] adopt a district system in order to better the chances of a minority group to secure representation of their own particular interests."¹⁶

Both the *Newman* and the *Owens* cases recognize that multi-mem-

¹² 1968 Mass. Adv. Sh. 117, 241 N.E.2d 163.

¹³ *Id.* at 1120, 241 N.E.2d at 165.

¹⁴ *Id.* at 1123, 241 N.E.2d at 167-168.

¹⁵ 304 F. Supp. 1327 (D. Mass. 1969).

¹⁶ *Id.* at 1329. For further study of this problem see Bانشaf, Multi-member Electoral Districts—Do They Violate the "One Man, One Vote Principle?" 75 Yale L.J. 1309 (1966); and Comment, Reapportionment, 79 Harv. L. Rev. 1228 (1966).

ber districts are constitutionally permissible so long as the requisite constitutional standards of fairness and equal voting power are met. *Owens*, however, goes somewhat further than *Newman* by indicating that a multi-member district might be considered invalid if it were "deliberately adopted for the purpose of minimizing the voting influence of some group within the electorate."¹⁷

§9.9. **Police and the community.** In recent years inner-city residents have vented their anger and frustration at the causes and conditions of their poverty by rioting.¹ These riots have in turn led to a further alienation of the police and the residents. Massachusetts has been fortunate in that there has been but one serious civil disorder where there occurred a direct confrontation between the police and the community at large. There have, however, been several preventive steps taken to assure protection of the rights of both the individual citizens and the police should such an upheaval occur.

Several statutes have been enacted which respond to situations likely to occur during civil disturbances. It is hoped that by providing, and then publicizing, regulations which govern police-community relations the knowledge of the consequences to follow this proscribed conduct will deter potential rioters from such a course. To this end Chapter 265 of the General Laws was amended to provide a minimum penalty for committing an assault and battery upon a police officer or fireman engaged in the performance of his duty.² The punishment to be incurred is imprisonment for not less than ten days nor more than two and one-half years, or a fine to range between a minimum of \$100 and a maximum of \$500.

Although the physical violence which occurs during a civil disorder and which often causes death and injury to participants and bystanders alike is the most serious and abhorrent feature of riots, the loss of property which results from fire damage and looting spells economic ruin and disaster to many others. One device which is frequently used in these situations and which causes great damage is the Molotov cocktail. Again the theory of preventive deterrence was employed when the General Court made it a criminal offense to have in one's possession or control such a device.³ In addition to prescribing both imprisonment and/or a fine for this violation, the statute provides for the arrest without a warrant of anyone who violates this act and allows him to be held in jail until a complaint may be filed. There is a proviso to the statute, which requires the complaint to be filed within 24 hours.

¹⁷ 304 F. Supp. at 1329.

§9.9. ¹ Report of the National Advisory Commission on Civil Disorders (N.Y. Times ed. 1968). See also H. Bagley and H. Mendelsohn, *Minorities and the Police: Confrontation in America* (1969).

² Acts of 1969, c. 359. See also Acts of 1968, cc. 563 and 579 for provisions relating to emergency conditions during civil disorders.

³ Acts of 1969, c. 431.

The Massachusetts Bar Association has appointed a Subcommittee on the Prevention of Civil Disorders.⁴ The primary function of this subcommittee is to mobilize attorneys to be present at the scene of any such disorder to advise participants of their legal rights. The subcommittee has also, in association with the Boston Police Department, proposed a series of conduct guidelines for attorneys present at the scene of a disorder. These guidelines recognize that an attorney may be present at the scene of a demonstration or disorder as an observer, mediator or counsel without being considered a participant. The guidelines, therefore, provide that an attorney who is performing these functions shall not be arrested. They contain three major points. First, if an attorney who is acting in this role is mistakenly arrested, the bar association and the Boston Police Department agree to attempt to obtain the attorney's release, to permit him to resume his activities and to try to secure a pretrial dismissal of all charges against him. The second guideline places upon the attorney the burden of making his presence and status known to the law enforcement officers present at the disorder. The police are given a corresponding duty to apprise themselves of the status of the attorney. The third and final guideline allows attorneys acting as mediators or observers to remain present at the disorder although demonstrators are being arrested. An attorney acting in that capacity may stay at the scene of a disorder until he is advised by a law enforcement official with the rank of captain or above that his continued presence may result in imminent physical injury to the attorney. Once the attorney has been so advised, and if he then refuses to leave, he may be escorted from the scene of the disorder, but the attorney may not be arrested if he refuses to depart.⁵

One of the major reasons for the exacerbation of police-community relations has been the feeling on the part of residents that the police are not sensitive towards them and their problems. A policeman's job often requires him to achieve an understanding of a people who are culturally, ethnically or racially different from himself. This is a difficult task. Education is often viewed as the best method of merging the gap between two cultures. By requiring policemen to have completed a high school education,⁶ the Massachusetts legislature hopes that the police of the future will have gained a knowledge of the world in which they live of sufficient breadth to attune them to the neighborhoods in which they serve. An increased empathy on the part of the police towards the community in which they work would result in an amelioration of the relations between the two groups.

What is perhaps most urgently needed to ensure understanding between the police and ghetto residents is a recruitment program on

⁴ One of the authors, Professor Garrity, is currently serving as chairman of this subcommittee.

⁵ See "What Lawyers Can Do in Response to the Report of the Commission on Civil Disorders," American Bar Association and Lawyers Committee for Civil Rights Under Law Institute (1968).

⁶ Acts of 1969, c. 484. See generally, Skolnick, *The Police and the Urban Ghetto* (1968).

the part of metropolitan police departments among minority groups. When a ghetto resident sees that the neighborhood policeman is a member of his own race, it is felt that he will begin to think of law enforcement as a force which is working for him rather than against him.⁷

§9.10. Conclusion. Since the 1967 SURVEY article dealing with Poverty Law, to repeat the point made previously in this article, both the poor themselves and their legal advocates have been radicalized to achieve radical change. The poor no longer silently brood concerning the harsh conditions of their lives. They have united to demand increased benefits and power from society. This phenomenon can be observed in each of the substantive areas previously discussed. In public assistance, welfare mothers have demonstrated for increased benefits. Public and private housing tenants have joined in rent strikes. Parents of inner-city students have taken over neighborhood schools. Black workers have been jailed for illegal picketing on all white construction sites.

Where the poor have felt they have encountered discrimination, they have not hesitated to challenge institutions in court to demand an end to injustice. In the case of *Local Finance Co. v. Massachusetts Commission Against Discrimination*,¹ for example, a finance company was prohibited from requiring a prospective applicant's race to be entered on the loan application form on the grounds that since the company "is open to and solicits the patronage of the general public," it fits within the definition of a "place of public accommodation" within the meaning of G.L., c. 272, §§92A and 98, and is thus prohibited from making any distinction on the basis of color.²

The radicalization of legal advocates for the poor is reflected by the increased number of attorneys who are devoting their energies and expertise to eliminating the causes and conditions of poverty. As noted previously, this can be seen in the increased number of legal services programs and in the corresponding rise in the numbers of attorneys employed by these programs. Sharp increases in the dedication of legal resources for the poor may also be viewed in the increased amount of de bono publico work undertaken by private practitioners, in the establishment locally of such organizations as the Lawyers' Committee for Civil Rights Under Law, and in an increased social awareness on the part of bar associations, such as the Boston Bar Association's sponsorship of a low income housing project. This combination of increased activity on the part of the poor and their legal representatives has and shall continue to generate much activity in the poverty law area.³

⁷ Ibid.

¹ 1968 Mass. Adv. Sh. 1287, 242 N.E.2d 536.

² Id. at 1291, 242 N.E.2d at 538.

³ The most comprehensive reading list in this area is found in Harvith, *Poverty and the Law: A Course Outline and Reading List*, 33 Albany L. Rev. 48 (1969).

