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PAPER No. 5 (Part 2)

ISSUES IN WELFARE ADMINISTRATION: INTERGOVERNMENTAL RELATIONSHIPS

A VOLUME OF STUDIES

PREPARED FOR THE USE OF THE

SUBCOMMITTEE ON FISCAL POLICY

OF THE

JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES

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LETTERS OF TRANSMITTAL

March 2, 1973.

To the Members of the Joint Economic Committee:

Transmitted herewith is a volume of studies entitled "Issues in Welfare Administration: Intergovernmental Relationships," submitted to the Subcommittee on Fiscal Policy of the Joint Economic Committee. This is part 2 of a three-part series on the administration of welfare, and was prepared as part of the subcommittee's comprehensive study of the Nation's welfare-related programs.

The views expressed in these studies do not necessarily represent the views of members of the subcommittee or the subcommittee staff.

Wright Patman,
Chairman, Joint Economic Committee.

March 1, 1973.

Hon. Wright Patman,
Chairman, Joint Economic Committee,
U.S. Congress, Washington, D.C.

Dear Mr. Chairman: Transmitted herewith is a volume of studies entitled "Issues in Welfare Administration: Intergovernmental Relationships." This is part 2 of a three-part series of studies on welfare administration.

The administrability of welfare programs is the foundation upon which any sensible and realistic reform of our public welfare programs must be based. The studies in this volume are focused on the relationships among the different levels of government in welfare administration. This topic is of the utmost importance in considering welfare reform alternatives because each level of government is now deeply enmeshed in the present array of programs. Any effort to change drastically the role of one governmental level will necessarily have repercussions on other governmental units. Well-intentioned efforts to reform welfare programs at the Federal level can be undermined if the interests and concerns of State and local governments are not considered.

Subcommittee staff members James R. Storey, Alair A. Townsend, and Vivian Lewis were responsible for compiling and editing this volume.

The papers contained herein represent only the opinions of their authors and are not necessarily reflective of the views of the subcommittee members or staff.

Martha W. Griffiths,
Chairman, Subcommittee on Fiscal Policy.

FOREWORD

As the crisis in public welfare has deepened over the years, increasing attention has been given to the fact that many of the problems with welfare programs have grown out of certain administrative practices which may have outlived their usefulness in the face of changes in clientele, in administrative personnel and workloads, and in public expectations about program management and integrity. On the other hand, it is becoming more and more obvious that good management of welfare programs at all levels of government may be impossible, given the inequities and inefficiencies built into our present welfare law and the enormous administrative burden that a thorough implementation of present law would demand.

Because the administrability of welfare programs is necessarily the foundation upon which any sensible and realistic welfare reform must be based, the Subcommittee on Fiscal Policy has taken steps to insure that management problems and potential solutions are fully aired before the public. The subcommittee has already held public hearings in Washington and in three other cities to hear firsthand of the administrative problems being grappled with by agency heads and welfare caseworkers.[1] In this volume (Paper No. 5, "Issues in Welfare Administration") the subcommittee is presenting the work of several authors who have analyzed these problems and considered possible alternatives for future program design that would restore effective management of public welfare funds.

"Issues in Welfare Administration" is being released in three parts. The first part, written by Sharon Galm of the staff of the Subcommittee on Fiscal Policy, discusses the many administrative problems which now beset welfare programs and the feasibility of solutions within the present program framework.

Part 2 includes four papers dealing with the difficulties prompted by the involvement of all three levels of government—Federal, State, and local—in welfare administration. The possibilities for future strengthening of the Federal role are analyzed as well. These papers were written by Joel F. Handler, Irene Lurie, and Joseph Heffernan of the Institute for Research on Poverty, University of Wisconsin, and by Peter E. Sitkin of the Hastings College of the Law, University of California.

Part 3 applies the expertise acquired in administering the several Federal experiments in income maintenance to the many technical and policy issues involved in the reform of the administrative structure of welfare programs. David N. Kershaw of Mathematica, Inc.,

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[1] Problems in Administration of Public Welfare Programs (pts. 1–3), hearings before the Subcommittee on Fiscal Policy of the Joint Economic Committee, U.S. Government Printing Office, Washington, D.C., 1972.

describes in a comprehensive fashion the administrative structure needed to operate at a national level the type of income maintenance programs experimented with by the Office of Economic Opportunity (OEO) and the Department of Health, Education, and Welfare (HEW). Jodie T. Allen of the Urban Institute presents a detailed analysis of the implications for costs, equity, and incentives resulting from different approaches to accounting for changes in recipient income over time and the consequent adjustments in benefit levels necessitated. The third paper in part 3, by D. Lee Bawden of the Institute for Research on Poverty, University of Wisconsin, considers the special administrative problems likely to be incurred by any income maintenance program which covers large numbers of self-employed individuals.

The studies included in this part (pt. 2) of paper No. 5 are those concerned with the relationships among the different levels of government in welfare administration. The topic is of the utmost importance in considering welfare reform alternatives because each level of government is deeply enmeshed in the present array of programs. Any effort to change drastically the role of one governmental level will necessarily have repercussions on other governmental units. Thus, these intergovernmental relationships must be carefully examined and kept in mind; otherwise, well-intentioned efforts to reform welfare programs at the Federal level can be undermined by the predictable reactions of State and local governments acting in their own interests.

The first study, "Federal-State Interests in Welfare Administration," was written by Joel F. Handler. It traces the historic rationale for the State and local administration of the federally aided public assistance programs up to the present day. describing the various political forces that shape the issue of Federal versus non-Federal administration. Equating local administration with society's perceived need to control recipient behavior on an individualized, case-by-case basis, Mr. Handler concludes that this need for social control has been relaxed for the aged poor population but not for the poor who are in families with employable members. Thus, however ineffective local administration of family welfare programs, in fact, may be in monitoring and controlling behavior, Mr. Handler's viewpoint is that the political forces for retention of local control over these programs will prevail for the immediate future.

The second paper, by Peter E. Sitkin, is entitled "Welfare Law: Narrowing the Gap Between Congressional Policy and Local Practice." This paper deals with a problem endemic in any governmental system which involves the grant of funds from one level of government to another: the difficulty the grantor has in channeling the grantee's administrative behavior in the course required by the statute authorizing the grant. The conformity problem has arisen time and again in welfare programs mainly because State and local governments finance a significant portion of the costs and have sole responsibility for program administration, but must abide by Federal law and court interpretations thereof in administering their own as well as the Federal share of the money.

Mr. Sitkin has looked at the specific case of conformity issues in California over the last 5 years. These issues and others like them have been contested in many other jurisdictions as well. The problems are not unique to California. His paper focuses on two sets of issues—those which required increases in benefits paid by the State and those which dealt with the enforcement of child support obligations. The paper considers only the legal problems in obtaining Federal action for State compliance; it does not address the larger issue of whether or not the current welfare laws are a rational body of laws with which complete conformity is feasible or desirable, given constraints on State finances and the competing demands for those funds.

The third paper, by Irene Lurie, analyzes the "Legislative, Administrative, and Judicial Changes in the AFDC Program, 1967–71." This study illustrates how executive, legislative, and judicial actions at all levels of government have had a dramatic impact on the nature of the largest cash welfare program, Aid to Families with Dependent Children (AFDC). In particular, Miss Lurie demonstrates the likelihood that these numerous amendments, regulations, and court decisions account for most of the rapid growth in the AFDC caseload over the past 5 years.

Beginning with the 1967 amendments to the Social Security Act, Miss Lurie's paper discusses the implications of those amendments for AFDC eligibility and devotes special attenion to the affects of the liberalized treatment of earned income in computing AFDC benefits. This paper also details State actions to raise payment levels, improvements in Federal financing for State expenditures, changes in State administration imposed by the Department of Health, Education, and Welfare, and the judicial decisions which have had the greatest impact on welfare eligibility and payments.

Miss Lurie concludes by pointing out that massive changes in welfare programs have occurred within the existing Federal-State program structure even while structural reform was being debated in the Congress. This fact suggests that tinkering with AFDC and other current programs could offer interim improvement while the search for politically acceptable alternatives continues.

The last paper in part 2 is entitled "Public Assistance and Social Services." Written by Joseph Heffernan, this paper traces the history of the arrangements between Federal and State Governments for the provision of social services to welfare recipients. It discusses the aspects of services which may be essential to income maintenance programs and the aspects which may be organized independently of any arrangements for providing cash income support.

CONTENTS

FEDERAL-STATE INTERESTS IN WELFARE ADMINISTRATION

By JOEL F. HANDLER*

SUMMARY

Federal-State interests in welfare administration are defined as the allocation of governmental authority over the administration of welfare programs. This paper examines the allocation between the Federal and State (and local) governments from an historical and comparative perspective and considers how this allocation would be preserved or modified in four welfare proposals: H.R. 1 (and the Family Assistance Act of 1970); the Senate Finance Committee's version of H.R. 1 (referred to hereafter as the SFC bill); a universal demogrant; and the model statute prepared for the President's Commission on Income Maintenance Programs (the Heineman Commission).[1] The concluding section of the paper attempts to predict the future of Federal-State interests in welfare reform and offers recommendations.

The principal arguments in favor of federalizing welfare, especially the AFDC program, are to reduce inequities among the States and to increase administrative efficiency including, of course, fiscal control. Inequity and inefficiency are inherent characteristics of a Federal grant-in-aid, State-administered system. However, thus far these characteristics of welfare have been planned and supported by both the Federal and State governments.

The thesis developed in this paper is that the administrative characteristics of particular welfare programs vary with the need to imple-

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*Professor of Law, Wisconsin Law School; Fellow, Institute for Research on Poverty, University of Wisconsin. This paper was presented at the Conference on Integrating Income Maintenance Programs, which was sponsored by the Institute for Research on Poverty and the Subcommittee on Fiscal Policy of the Joint Economic Committee and was held at the Institute.

[1] The H.R. 1 proposal referred to here is the family assistance plan incorporated in H.R. 1 as passed by the House in June 1971. The family assistance plan was not part of the H.R. 1 bill which was passed by the Congress in October 1972. It would have replaced the State-run aid to families with dependent children (AFDC) program with a basic Federal program for all families with children and an optional State supplemental program. The Senate Finance Committee bill (of 1972) would have given more regulatory power over welfare to the States and would have concentrated Federal efforts on getting people to work through guaranteed jobs and child care, and wage subsidies at low wage rates. No welfare aid would be offered to the employable population. A universal demogrant proposal eliminates income assistance through welfare programs and relies instead on greater income redistribution through the income tax system with refundable tax credits available to all citizens as either grants or offsets against tax liabilities. The Heineman Commission plan, although similar to a demogrant, would have operated as a federally administered assistance program with benefits more narrowly targeted on the poverty population, thereby requiring less overall redistribution than would a demogrant plan. This last plan is usually described as a negative income tax plan.

ment behavioral controls that society ascribes for particular beneficiary groups. When one compares various income transfer programs (e.g., social security versus AFDC) or observes the transformation of welfare programs over time (e.g., old-age assistance), one sees that when the class of beneficiaries are the deserving poor (i.e., those society feels need only minimal control), programs tend to become routinized and federalized. Conversely, when programs are for the undeserving poor (those society feels it must control), they remain highly discretionary and are administered at the State and local levels. The reason for this difference in administrative treatment is that the test between the deserving and undeserving is a test of whether or not a family's condition of poverty is voluntary. Because of individual hardships, we are not willing to administer such a test wholesale; individual judgments have to be made unless the class is comprised of beneficiaries clearly out of the labor market (e.g., the aged).

Voluntary poverty is considered as socially deviant behavior, and controlling deviant behavior has been historically a State (and local) government function. State government needs the administrative power over welfare to deal with the political issues raised by voluntary poverty; moreover, this arrangement fits the needs of Congress, which has never been keen on making explicit policy decisions on the substantive issues of welfare.

The four welfare proposals are first compared in terms of whether allocations are made between the two levels of government. Except for the Heineman Commission model statute, the proposals are ambiguous on this basic point—many of the key provisions can be administered either by the Federal or the State governments. Since basic allocations will still have to be made, whether the historic pattern will emerge—that is, the States and the Federal Government agreeing on State retention of control—will depend on whether sufficient administrative discretion is retained so that government has the power to deal with the politics of welfare. If welfare is sufficiently routinized, then power to deal with welfare politics through case by case administration would be lacking, and the States would be less interested in retaining administrative responsibility.

The four proposals are then compared in terms of the basic techniques for controlling voluntary poverty: the means test or intake process; rules governing desertion and support from the absent parent; rules governing the man-in-the-house; suitable home provisions; control over the family budget; and the work test. The model statute contains the least amount of discretion to control deviant behavior; H.R. 1 (and the Family Assistance Act) contains a great deal—particularly with respect to the intake process and the work test; and the SFC bill contains the most administrative discretion. The demogrant can be structured in a variety of different ways. It can be very simple and routine, or various discretionary conditions (for example, work tests) can be built into it by categorizing beneficiaries. It can be State or federally administered.

The welfare reform plans on the national agenda thus offer several options for the allocation of Federal-State interests in welfare administration. The options taken will depend on several empirical questions. Since voluntary poverty will likely continue as the major issue, controlling deviant behavior may prompt a continued State interest in welfare administration. There might be even more discretionary power for the States in the six techniques of control mentioned above. On the other hand, it is argued that even though welfare administration is controlling deviant behavior, the States are so fed up that they are willing to turn over the administration to the Federal Government. Or it may be that the controls can no longer work in the present economic and social framework. At the present time, we have no way of knowing which viewpoint will prevail until the choices have to be made.

The approach of the SFC bill bears on this decision. It alone would increase the States' discretionary power to handle the welfare problem and the Federal financial share of this administration. Second, it makes clear its position on the allocation question: the federally administered Work Administration will cream the most employable of the welfare recipient class and, through the definition of "incapacitated" for work, will refer the problems of welfare back to the States. According to the Senate Finance Committee, then, Congress does not want the welfare program under its own control.[2]

The final question is the desirability of Federal administration. The theoretical and technical problems of allocation of Federal-State interests, as well as the integration of various welfare programs, presumably can be resolved on technical grounds. The real difficulty is one of political will—deciding what is to be done to and for those people who need welfare. Administrative arrangements reflect basic political decisions.

Introduction

In current discussions of welfare reform, particularly the more far-reaching reforms, it is often tacitly assumed that welfare will be federalized; that is, the cash assistance program for families (now aid to families with dependent children) will become a wholly federally financed and administered program replacing the present State and local administration under Federal grants-in-aid.

Federalization of welfare may be a desired goal, but it will not be accomplished easily. In fact, this shift in administrative power would be a truly revolutionary change in the politics of welfare. The present distribution of administrative authority in welfare between the Federal Government and the States has a functional basis that grew out of our fundamental beliefs about the nature, causes, and cures of poverty and the politics of dealing with these issues. We might wonder, then, how this distribution of administrative power can change without a corresponding change in our attitudes toward the poor or a loss of faith in the effectiveness of local governmental efforts to deal with the problems of poverty. Perhaps this is a pessimistic way to approach the problems of reforming administration, but it is important to understand what is at stake in the present distribution of authority before that distribution can be changed. Moreover, the distribution issue is of critical importance. Time and again, legislated

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[2] The provisions of the SFC bill relating to families were adopted in part by the Senate in October 1972, but were dropped in the conference on H.R. 1 with the House of Representatives.

changes in welfare have become unrecognizable after filtering through the Federal-State bureaucracy, and unless the distribution of administrative power is changed, future welfare reform will probably suffer the same fate.

The Arguments for Federalizing the Family Programs

The various arguments advanced in support of federalizing the family welfare programs usually cluster around two main issues: The enormous variation in operation of the AFDC program from State to State, and the inability of the Federal Government to control this vast, decentralized bureaucracy. From an administrative standpoint, AFDC is both inequitable and inefficient.

The variation in operation is inherent in the existing grant-in-aid structure. When the Federal Government entered into the welfare field with the passage of the Social Security Act, its aim was to bolster the categorical aid programs, not to replace them. Federal requirements for the grants-in-aid were fairly minimal, and cast mostly in procedural terms. Thus, the States retained the authority to set benefit levels, provide different kinds of ancillary benefits, and administer various welfare rules (for example, work tests, suitable home, and man-in-the-house). This is still largely true today despite the many amendments to the Social Security Act and various court decisions striking down some State rules. There is great disparity in levels of cash benefits. These variations in part reflect differences in costs of living and wage rates, since welfare has always had to peg its levels of assistance at the less-eligible level. There are also variations in the levels and kinds of ancillary benefits made available, either in cash or in kind. Some States have fairly extensive programs of special needs, although an increasing number of States are adopting simpler, flat grant systems of benefit computation. States also vary in the kinds of administrative rules that are applicable to the program.

All States investigate financial eligibility but there is enormous variation as to how this investigation is carried out, both as to the time that the investigation takes as well as to the amount of independent investigation that is conducted. States use different practices in seeking to obtain support from the absent father. The pursuit of responsible relatives varies in terms of the amounts that they are supposed to contribute and the extent to which the welfare agencies actually try to collect. The moral behavior of the recipients, under the so-called suitable home rules and man-in-the-house rules, is of great concern in some parts of the country and is met with indifference in other areas. Some States seek to supervise how the budget is spent; other States don't bother. Also, there has always been enormous variation in agency attitudes toward work. In several parts of the country, welfare rolls have traditionally been closed down when jobs are deemed available (crops are ready for harvesting); in other areas of the country, particularly the large urban centers, there is often little or no effort to force or even help recipients find employment; then, there are also cases where recipients are required to stop work by the agency because work-related expenses prove too costly for the agency.[3]

In sum, at the operational level in the field, AFDC is an extremely variegated program. Indeed, it is quite misleading to think of it as a national program. In substantive content, as well as administrative practice, it is more akin to public education, health services, mental health, crime control, and other State and local programs that also receive varying amounts of Federal financial support.

With AFDC, it is argued that the State operation results in inequity—recipients receive different benefits depending on where they live, and this produces migration thus penalizing the more liberal or wealthier States—and also allows for racial discrimination. These variations are intolerable for what is thought to be essentially a national problem—poverty. We will return to these arguments in a moment, but point out now that the same objections also apply to education, health, crime, and jobs. They, too, are national concerns and the present beneficiaries suffer from different levels of benefits and services, discrimination, and administrative discretion.

The other argument advanced for federalizing welfare is that under the present structure, the Federal Government is incapable of controlling the welfare bureaucracy. This lack of control operates on two levels. First, there is the inability of HEW to monitor the State welfare bureaucracies and force them to comply with existing Federal requirements. HEW has the power to hold conformity hearings and if a State is held to be out of conformity with Federal law, to cut off Federal funds. The last time funds were cut off was before World War II. From time to time conformity hearings are held, and on occasion compromises are worked out. But most often, when a big State has a large issue at stake, HEW will back down and find some method of allowing the State to accomplish what it wants. (Waivers from Federal law can be granted under the guise of "experiments.") In truth, the State welfare bureaucracies, with their friends in Congress and the Executive Office of the President, are more powerful than HEW.[4]

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[3] These administrative characteristics of AFDC are, by now, well known and documented in a variety of sources. See, e.g., J. Handler and E. J. Hollingsworth, The Deserving Poor; A Study of Welfare Administration (Chicago: Markham Publishing Co., 1971); L. Podell, H. Yahr, and R. Pomeroy, "Families on Welfare in New York City," "Effects of Eligibility Investigations on Welfare Clients," "Effects of Caseworker Turnover on Welfare Clients," and "Reactions of Welfare Clients to Caseworker Contact" (mimeo, Center for the Study of Urban Problems, Bernard M. Baruch College, City University of New York); W. Bell, Aid to Dependent Children (New York; Columbia University Press, 1965); Greenleigh Associates, Inc., Facts, Fallacies and Future: A Study of the Aid to Dependent Children Program of Cook County, Ill. (New York: Greenleigh Associates, Inc., 1960); E. V. Sparer, "Materials in Public Assistance Law" (Philadelphia: University of Pennsylvania Law School, mimeo, 1969); J. tenBrock, Family Law and the Poor, ed. J. Handler (Westport, Conn.: Greenwood Press, 1971).

[4] See G. Steiner, Social Insecurity: The Politics of Welfare, ch. 4 (Chicago: Rand, McNally & Co., 1966); R. Rabin, "Implementation of the Cost-of-Living Adjustment for AFDC Recipients: A Case Study in Welfare Administration," 118 University of Pennsylvania Law Review, No. 8 (July 1970).

The second type of lack of control concerns the two key congressional committees—the House Ways and Means Committee, chaired by Wilbur Mills, and the Senate Finance Committee, headed by Russell Long. Starting in the 1950's, these two committees have periodically enacted a series of reforms designed to solve the welfare crisis. One can recall NOLEO (notice to law enforcement officials), the social service amendments (twice), the WIN program, and the 1972 work requirements. Even though it may have been totally unrealistic to expect any basic changes in welfare to have been accomplished by these palliatives, nevertheless, the difficulties of getting even these reforms implemented with any degree of uniformity or competence by the States became increasingly manifest. As the welfare crisis deepened, the frustration of these two committees has become more and more pronounced. They both now talk in terms of harsh measures to solve the welfare crisis, but, for very good reason, there is grave doubt as to how these measures will be implemented under existing administrative arrangements.

Of course, it should be pointed out that States lack complete control, too, due to court cases, HEW regulations, frequent legislative changes, high staff turnover rates, and the like.

These problems of welfare administration—variation, discretion, lack of control—are obvious, but it does not necessarily follow that because of the presence of these problems, welfare will therefore be federalized. As mentioned before, crime, education, health, as well as other problems such as pollution and urban decay are also so-called national problems plagued by variation, discretion, and lack of control; but there is no significant move to federalize administration in these areas. Conversely, other problems have become federalized: in the social welfare field our most prominent example is social security, which is not only completely federally financed but also completely federally administered. What, then, explains the difference between social security and AFDC? Is it not enough to label a problem "national" and point to the difficulties of State administration? One must first inquire into the theory of federalism in welfare. What explains the present distribution of authority? This analysis will give us insight into the federalism issues latent or explicit in the proposed welfare reforms now under consideration and perhaps will suggest ways in which these issues can be solved.

The Functions of Federalism: The "Deserving Poor"

When we compare the administrative characteristics of our principal welfare programs, we can distinguish two polar examples, with other programs falling somewhere in between. At one extreme, we have the Social Security system (OASDHI). This program is completely federalized, and administration, for the most part, is routinized. Eligibility is clearly defined for most cases, easily determined by objective criteria, and benefits are paid out according to fixed schedules. There is very little administrative discretion in the standard social security case. Social security is financed by a separate tax; its basic concept is insurance (although this concept has become attenuated over the years); and, while it has significant poverty-reduction features, the same benefits are paid to all regardless of wealth. There are limits, though, on the amount of earnings a beneficiary can receive.

The contrast is the AFDC program. This program is run at the State and local level. Eligibility is not clear cut. The amount of aid is individually determined. AFDC is highly discretionary, as a matter of law (although as a matter of administrative practice, it may often be routine and may be becoming more so). This program is financed out of general revenues and is intended to be for the very poor only. In contrast to social security, which is claimed as a right, AFDC uses discretion and stigma to keep costs down.

Aid to the blind and disabled and old-age assistance, although also categorical aid programs, do not share AFDC's administrative characteristics. Aid to the blind programs were enacted contemporaneously with AFDC, but from the start were very different.[5] The earliest AFDC statutes were part of the juvenile delinquency reforms at the turn of the century (the juvenile court had jurisdiction over delinquent, dependent, and neglected children), and were always highly discretionary, conditioned relief. The juvenile court judge could use the mother (if the home was suitable) as an alternative to placing the "dependent" (i.e., poor) child in an institution or a foster home. Aid to the blind was a different program. Eligibility was fairly clear cut (a physician determined blindness) and the grant was a fixed amount (actually called a pension in some States). There was very little discretion in the program and, with the exception of begging, there were no rules on moral behavior.

Old-age assistance (OAA), the other categorical program, had yet a different history. These programs were first enacted by the States in the 1920's and were viewed with great suspicion. The elderly might voluntarily pauperize themselves (i.e., convey their property to their children) to qualify for assistance. The program might discourage work and saving; it might also discourage the responsibility of children for their parents. Whether these fears were justified or not, the early OAA statutes were replete with moralistic conditions and penalties for fraud. The aged had to be not only poor but deserving. In Wisconsin, for example, an applicant would be disqualified if he had been convicted of a felony or had failed to support his family even for a short period of time within 15 years of his application. Over the years, the administration of OAA had changed, and today, even though still financed as a categorical aid, in many parts of the country it is administered quite like the social security system—that is, fairly routinely with very little, if any, concern for the noneconomic aspects of the recipients. Most old people on welfare receive support from both social security and OAA. While there is still great controversy over federalizing the family programs (AFDC), there seems to be more agreement on federalizing the adult programs (OAA, aid to the blind, and aid to the disabled).[5a]

What has happened, of course, is that social mores concerning the role of the family and of society as a whole in supporting the aged have undergone considerable change. Since the 1920's, concepts of

[5] For historical materials on the categorical programs, see J. Handler and A. Goodstein. "The Legislative Development of Public Assistance," 1968 Wisconsin Law Review, p. 414.

[5a] Indeed, since this paper was written, legislation has been passed in the form of H.R. 1 to federalize the adult categories beginning January 1974.—ed. note.

family responsibility have become narrower as mobility increased, attitudes toward individual saving in an advanced industrial society changed as a result of the great depression, and as social security took hold, the aged poor became more politically active. Perhaps the most crucial differences between OAA and AFDC are that the OAA recipients are primarily white, they vote, and they don't have illegitimate children. In any event, the administrative characteristics of this welfare program are very different from the family program even though both are categorical aids financed under a grant-in-aid structure and administered by the States.

The unemployment compensation system is a contributory insurance program, but it operates more like AFDC than social security. Although under the Department of Labor, it is administered by the State employment services, and is designed to provide cash assistance to the worker who is out of work for acceptable reasons. Separating the "acceptable" from the "unacceptable" unemployed is accomplished in two ways. First, not all of the work force is covered by unemployment insurance; excluded are the less skilled and marginal workers such as domestics, farm and farm processing workers, small firm workers, and self-employed workers seeking the first job, and those reentering the labor market. Second, covered workers will still not be eligible unless they satisfy a work test. If they are unemployed because of a labor dispute, or quit work without cause, or are fired for misconduct, or are not available for work, or refuse suitable work, they are not eligible for benefits.

There is very little systematic empirical evidence on how the State employment services administer such discretionary terms as "suitable" work and "reasonable time" and "bona fide offer of employment," but impressionistic evidence indicates a highly variegated pattern. Different offices use different procedures and guidelines to test the seriousness and reliability of claimants in looking for work. In essence, the work test decisions are discretionary applications of vague standards by field level personnel designed to separate out claimants who have had a good work record, who are actively seeking work, and who, if necessary, will take a job of lower skill and pay. As with AFDC, then, we have a program that is State run, with widely varying benefits and conditions, highly discretionary, and designed to separate the worthy from the unworthy. Widespread belief that the rules are not separating the two groups is at the heart of the criticism of these programs.

The residual welfare program in America, the one designed to provide relief for the destitute not covered by any other program, is general assistance. This program is completely State and local with the greatest discretion and variety in terms of eligibility, benefits, and conditions.[6]

Looking at the administrative characteristics of these very different programs, one sees that the distribution of administrative authority varies with the degree of behavioral control that society wishes to exert over the particular groups of recipients. This is evident when we

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[6] Descriptions of these programs may be found in President's Commission on Income Maintenance Programs, Poverty Amid Plenty: The American Paradox (Washington, D.C.: U.S. Government Printing Office. 1969), and "Characteristics of General Assistance in the United States as of 1969." Report 39 (Washington, D.C.: U.S. Department of Health, Education, and Welfare.)

compare the social security program to AFDC, when we view the transformation of old-age assistance, and when we examine the major features of the unemployment compensation "insurance" system. When the recipients are "deserving," welfare is routinized, discretion is minimized, benefits are uniform, and administration is or is about to become federalized. Those we wish to control more closely are handled in the opposite manner: they are subject to a discretionary system, relief is conditioned, and administration is State and local.[7] Of course, the very size of the AFDC program may be moving the administration toward more routinization and simplification, even at the cost of lessened control over recipients.

What, then, is the difference between the "undeserving" and the "deserving" poor? Why have the former been treated in a discretionary manner, and why at the State and local level? The line between the "deserving" and "undeserving" poor is the line between voluntary and involuntary poverty.[8] At an earlier age, gross physical defects, such as blindness, served as the litmus paper; the workhouses, woodyards, and stonepiles were for the "able-bodied" poor. As other tests began to be used, the dividing lines became less clear—temporary disability, mental impairment, age, absence of a husband or the support of the father, un- and underemployment. The lack of clear-cut criteria in separating the voluntary poor from the truly needy is another way of saying that decisions have to be made in individual cases and discretion is needed.

Given that we want employables to work, the administrative issue is how we can accomplish this through program design and administrative control. Moreover, ever since Elizabethan times, voluntary poverty has been a moral issue. In those days and up until the 20th century pauperism was explicitly equated with criminality.[9] Today, it is still considered deviant behavior. Nevertheless, since the lines are not clear, the problems of separating the deviants from the needy have not been handled wholesale. This, then, is the dilemma. Wholesale (routinized) decisions will create either too much hardship—that is, deny benefits to the truly needy or cause too much suffering—or, on the other hand, might support too well those who may not be that strongly inclined to help themselves. Costs of welfare, on an individualized basis, must be watched closely lest voluntary poverty be encouraged. This is why frills—for example, television, telephones—must not be allowed, as well as increasing the size of the family. In other words, voluntary poverty involves not only a failure to support oneself: it also involves not supporting one's family, not controlling one's family size, and living too well at the public expense. On the other hand, the detailed categorical approach introduces other problems which arouse public criticism, including wasteful bureaucracy and undesirable incentives for both recipient and nonrecipient behavior.

Granted that welfare administration designed to separate the voluntary from the involuntary poor has to be discretionary and individual-

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[7] See generally, L. Friedman, "Social Welfare Legislation: An Introduction," 21 Stanford Law Review 217 (1969) : J. Handler, Reforming the Poor: Welfare Policy, Federalism, and Morality (New York: Basic Books. 1972), ch. 2.

[8] See generally, M. Rosenheim, "Vagrancy Concepts in Welfare Law" in Law of the Poor, ed. J. tenBrock (San Francisco: Chandler Publishing Co., 1968).

[9] See D. Matza, "Poverty and Disrepute" in Contemporary Social Problems, ed. R. Merton and R. Nesbit (New York: Harcourt, Brace & World, 1966).

ized, why must it be at the State level? Traditionally, the control of deviant behavior has been at the State and local level. Until this century, there were comparatively few Federal crimes, and even today, although we are witnessing a considerable increase in the substantive criminal law at the Federal level, control of deviant behavior is still considered to be mainly a State and local problem. Welfare fits into this historic division since controlling pauperism was a crime (or precriminal) problem. When relief to particular kinds of needy did not raise pauperism issues, then, different administrative arrangements were made. In the 19th century, the State, as distinguished from the county, came to administer the program.[10] And in the 1930's, social security became a national program, while aid to the categories remained at the State and local level.

There are important reasons why this division of authority has been maintained. Providing relief to people who may or may not be considered voluntarily poor has always provided several moral conflicts. Without belaboring the issue, the working taxpayer finds it intolerable to pay public funds to support idleness (with attendant costly behavioral characteristics—loose living, poor management, et cetera), but he also cannot inflict too much hardship, since the inevitable sufferers are guiltless children of blameworthy parents. These moral conflicts and dilemmas are felt most keenly by those who live in daily contact with the reality—the working taxpayers in the communities and the neighborhoods. At the local level, the taxpayers distrust the State officials, and the State and local people distrust the Federal Government. The anguish caused by supporting the questionable poor is not felt that strongly in the legislative halls, and certainly not in the professional bureaucracies. There is great distrust and lack of confidence in the Federal Government to be sufficiently sensitive to local needs and interests for these intensely felt problems. Governor Reagan voiced this feeling in his position that the adult programs should be federalized, with the family program remaining a State program.

This need of the State and local level to control the politics of welfare administration has also fit the needs of the Congress. Legislatures are reactive institutions. They do not seek out problems and enact solutions; rather, problems are thrust upon them, and they delay, and finally, when the pressure becomes too great, they enact legislation which may or may not be a "solution." Furthermore, the ideal solution from a legislative standpoint is one that stays solved—in the sense that it doesn't reappear and press for solution again in the next legislative year.[11] Legislatures have never been eager to handle welfare issues. Welfare problems are not top priority and do not lay claim to legislative attention as, for example, the annual personnel, operating, and capital budgets which the legislature must deal with, cannot put off, and which will absorb a great deal of legislative attention. There are other matters, particularly at the national level, that demand much more legislative attention than welfare. Also, the issues raised by welfare are the kind that politicians would rather avoid—race, sex, family relationships, work effort. In the area of family programs, there are no clear solutions to these problems; there are

[10] For examples, see J. Handler and A. Goodstein, supra note 3.
[11] See L. Friedman, supra note 5.

great conflicting pressures on how the problems should be solved. And, finally, as discussed above, the State and local levels of government are vitally interested in retaining control over the working out of the solutions.

The confluence of these political pressures has produced the single most important technique in welfare legislation—delegation. If one looks closely at all of the major pieces of so-called welfare reform legislation passed since welfare went into "crisis" (circa 1952), it will be seen that they are all in the nature of symbols and authorizations—States can get tough, or get repressive if they want to, but they don't have to. The State and local people can apply the laws of welfare as their local political needs determine. The administration of the means test can be routine, or highly investigative, or even a self-declaration (a permissible experiment). Notice to law enforcement officials (NOLEO) can be just that—routine notice and nothing more—or it can mean participation in court action, submission to lie detector tests, and so forth. States can threaten to take children under "suitable home" provisions, check beds, or ignore the moral behavior of welfare recipients unless some visibility occurs: for example, complaints and local political campaigns. Even administration of the work test can vary from completely ignoring its provisions to making recipients work to get their basic cash grant. And so it goes. For every significant provision in AFDC, one finds this wide range of flexibility. And thus far, both the States and the Federal Government have been willing to live with this arrangement.

The conclusion, then, is that if one looks at our welfare history, from the past up to today, we see that the States have always had a very real political interest in administering the family program above and beyond their financial stake. They are in favor of increasing the Federal financial share of this program, but only recently has there been any evidence that they want to turn it over to the Federal Government.[12]

To what extent will the historic State interest in controlling the administration of welfare be altered by the welfare reform proposals currently on the national agenda? First, we will consider H.R. 1 and the Senate Finance Committee's substitute for the welfare provisions of H.R. 1, and compare these provisions with a model statute designed to reflect the negative income tax proposal of the Heineman Commission (the President's Commission on Income Maintenance Programs). Then, we will turn to the Universal Demogrant Plan. In the final sections of the paper, we will discuss the future of welfare administration, the extent to which it is likely to be federalized, and whether more or less federalization of administration is desirable.

Welfare Reform Proposals

H.R. 1

One of the early goals of welfare reformers was a streamlined, single welfare administration, and by this they meant a Federal administration. However, neither the proposed Family Assistance Act of 1970

[12] See testimony of Governors before the Senate Finance Committee in January 1972.

nor its latest proposed version, H.R. 1, would have totally achieved that goal. The original Family Assistance Act (FAP I) required that States maintain their family programs (called State supplementation) but use Federal welfare rules; furthermore, it was not clear that the Federal Government was to administer its welfare program. Although there was an option for the States to have the Federal Government administer the supplementation programs with resultant financial savings for the States, it was entirely open under the legislation for the State welfare offices to administer the Family Assistance Act.

Under H.R 1, Federal control of aid to the working poor was specified, and Federal control would be extended to all Federal payments over a 2-year period. Financial incentives would be offered to States to relinquish control over State supplemental payments as well.

However, H.R. 1 creates several alternatives as to where the actual responsibility for field operations would lie. Concerning the Federal family program, there would be two instead of one: Opportunities for Families (OFP), administered by the Department of Labor, and Family Assistance (FAP II), administered by HEW. The dividing line is whether there is a presumptively employable adult in the family. For example, if the only adult in the family is a mother of a child under 3 years of age, then she would be in Family Assistance (with some exceptions). Conversely, if her child were school age, the mother would be presumptively employable and be in OFP. That does not necessarily mean that she will have to work; she still may not be eligible for work or training on grounds other than her child's age.

The reason for this division of administrative responsibility was that the House Ways and Means Committee was irate over what they considered to be the lack of cooperation, if not vigor, in HEW's administration of its part of the WIN program—that is, referring welfare recipients to Labor for work and training. The committee thinks that it would avoid this problem by putting all of these families initially under the jurisdiction of the Department of Labor. According to the committee's estimates, there will be 2.6 million families in OFP and about 1.4 million in FAP II. Thus, Labor would be the major welfare administrative agency.

One question that immediately arises, however, concerns the welfare program for OFP families. They need cash assistance while in training, waiting for work, or even working if the wage is not high enough. Would the Department of Labor handle the welfare part of OFP in addition to the manpower part? The answer is "No." The Department of Labor would contract with HEW to handle welfare. In other words, at the field level, a needy family would have either a FAP II card or an OFP card. If the former, then that family would deal entirely with HEW for all of its needs. If the latter, then that family would go to HEW for its cash or welfare needs, and would go to Labor for work and training. This arrangement would be similar to the present system. Furthermore, what is not specified is the referral mechanism, which is critically important—at least as far as the House Ways and Means Committee is concerned. What official using what criteria decides whether a person satisfies the work test? It is not true that State welfare agencies always held back on referrals; indeed, at least in California, the opposite was the case. The State welfare officials complained bitterly that Labor was much too particular in accepting referrals, and was concentrating too much on training and upgrading skills at the expense of putting people to work and thereby reducing welfare costs.

So far, we have been discussing the proposed administrative arrangements in terms of the Department of Labor and HEW. But actually that is not certain either. The present welfare statutes also read in terms of these two Federal departments, but in fact, welfare is administered by the State and county departments of welfare, and the WIN program is administered by the State employment service. The same situation could obtain under H.R. 1. Both Secretaries would have authority to contract out their responsibilities to public or private agencies. Indeed, the House Ways and Means Committee contemplates that at least during a transition period—Federal offices to handle 25 million recipients cannot be created overnight—the State agencies would be used. In fact, it was required that the State welfare departments separate social service from income maintenance by June 30, 1972. "The purpose of [this] provision," said the committee, "is to assure that State welfare agencies would be in a position to assist in the administration of the new programs, as agents of the Federal Government. * * *"[13] Federal reporting and verification systems can be tied in with State administration. For example, one of the innovations that the House committee is especially interested in is a system of cross-checking recipients through social security numbers, a mandatory quarterly self-reporting system, and the automatic termination of eligibility every 2 years, followed by reapplication. None of these requirements require Federal welfare administration.

The social security verification system presumably could be supplied to the States, just as the FBI fingerprinting system is available to State and local police. The self-reporting and reapplication rules can also be mandated on the States. In fact, the States would have to use these systems at least during the transition period. As far as the statutory language of H.R. 1 is concerned, Federal family program will be run by the Federal Government after the first year. There may be State pressure to extend indefinitely the "interim" administrative provisions (that is, State operation of the Federal program).

Then, there is the question of the State supplementation programs. As under the original Family Assistance Act, most States now pay higher benefits than is provided for under H.R. 1. Under FAP I, the States were required to maintain their programs and use the FAP eligibility rules. H.R. 1 takes a different approach. The States could do what they wish as far as supplementation is concerned, but they could not have any rules which would undermine the Federal program—for example, taxing rules on earned income that would defeat the Federal work incentive.

The existence of State programs along with the Federal program would make administration exceedingly complex and renders future predictions even more hazardous. There could be as many as four windows that welfare families would have to seek help from—for example, an OFP family going to Labor for work and training, to HEW for its Federal income maintenance, to State welfare for the State income supplementation, and to State social services for cash for special

[13] House committee report on H.R. 1.

needs and hard services (for example, day care, home helps, and emergency assistance).[14]

The proponents of the original Family Assistance Act thought that even two windows would be an undesirable result. They argued that even though the total cash grant per family would be from two sources, there should be only one window and that would be the Federal window. They contemplated, in other words, that with appropriate incentives, the States would turn over the administration of the State supplementation programs to the Federal Government. The States would save the entire cost of administration and be rid of a vexing political problem. Under H.R. 1, this option is still open; namely, the States can turn over their programs to the Federal Government and save the entire cost of administration.

No one knows, of course, what the States would eventually do under these options, but what we do know makes the idea of the Federal Government running State programs seem less than certain. There is probably not a single instance in American history where this kind of upstream delegation—from the States to the Federal Government—has occurred—that is, where the States turn over to the Federal Government the administration of State money. Delegation has always run the other way—the States run the Federal programs. In addition, as pointed out, the arrangements for welfare administration, at least heretofore, have been highly useful to the States as well as the Congress. The States have important political interests in maintaining control over welfare administration, as long as it does not cost too much.

Given the existence of the State programs, which could not conflict with the Federal family program, what then is at stake in controlling administration? Will the States be more inclined or less inclined to press for State control over the entire welfare program—both the Federal and the State parts? I think that they will be more inclined because the political issues of welfare—that is, the control of deviant behavior—is still very much alive, and there is still a great deal of flexibility in the administration of the Federal family program with which to exercise that control. If the substantive and procedural rules of the Federal family programs were set—providing for a routine, inflexible administration—then there would be incentives for the States not to seek control over administration. They would be saddled with the political problems of welfare without the means to respond to political pressures. This, however, is not the case with H.R. 1. When we review the critical problem areas of welfare, we shall see that there remains a great deal of flexibility in administration—and this will allow the appropriate political response.

The Senate Finance Committee Bill

The Senate Finance Committee (SFC) bill deals with three welfare programs: AFDC, the adult programs (aid to the aged, blind, and disabled), and a refined and expanded work program called

[14] The trend is for social services to be separated from income-maintenance and to stress hard services instead of counseling services. See J. Handler, "Controlling Social Service Clients: British Lesson for American Developments" (ms. Institute for Research on Poverty, 1972, forthcoming publication).

"Guaranteed Job Opportunities for Families." [15] On the issue of Federal-State interests in welfare administration, the bill moves in two different directions. A strong Federal administrative interest is asserted in the administration of the work program. The administration of AFDC is not only to remain at the State level, but a vigorous reassertion of State power over that program is set forth. The administration of the adult programs is also to remain at the State level—contrary to the position of H.R. 1—but there are to be federally imposed guaranteed minimum assistance levels, plus some uniform Federal eligibility definitions. On balance, as we shall see, the SFC bill represents a retreat from the Family Assistance Act of 1970 and H.R. 1. The Family Assistance Act and H.R. 1 attempted to start the process of eliminating the categorization of the poor and to at least establish the possibility of Federal administration. The SFC bill, on the contrary, reasserts the categories; it attempts to make a very sharp distinction between needy families with an able-bodied adult and those without such a person, and provides for the control of deviant behavior at the State and local level.

The SFC bill, in much the manner of H.R. 1, splits the needy family welfare population into two groups. Needy families headed by an able-bodied male, or by a mother with no child under 6 years of age (unless the mother is in school full time) are no longer eligible for AFDC. They would be under the guaranteed job opportunity (GJO) program.

Other needy families would be entitled to welfare because they would not be considered "employable"—that is, at least one child is under 6, or the mother is ill, incapacitated, aged, or lives too remote from a place of employment, or is attending school full time, or the family is headed by an incapacitated father and the mother is either not at home or, if at home, caring for the father. The Senate Finance Committee estimates that of the 3 million families now on AFDC, 40 percent would be considered "employable" and thus would fall under the guaranteed job opportunity program.

For families eligible for the work program, there will be three types of plans: (1) A guaranteed job provided by a newly created Work Administration which would pay $1.50 per hour for 32 hours a week for a maximum of $48 weekly; (2) for persons employed at less than $2 an hour but at least $1.50 per hour, there would be a wage supplement of three-quarters of the difference between the actual wage and $2; and (3) a work bonus of 10 percent of wages up to a maximum of $400, to be reduced as the husband's and wife's wages rise above $4,000.

The committee believes that its work program establishes the following: (1) Wages (that is, income under the program) are for working and do not vary with family size. There will be equal pay for equal work, and thus no economic incentive to have more children; (2) total income to the worker will increase as his rate of

[15] At this writing, there is no "bill" as such—that is, a proposed statute. Rather, the substantive provisions of what the proposed statute would contain are described in the Senate Finance Committee Report, Social Security and Welfare Reform; Summary of of the Principle Provisions of H.R. 1 as Determined by the Committee on Finance, 92d Congress, 2d session, June 13, 1972. Washington: U.S. Government Printing Office.

pay increases, and conversely, the less a worker works, the less he gets; (3) as the worker's wage rate increases, the cost to the Government decreases; (4) the value of work is increased as workers participate in private employment; and (5) earnings from other employment do not decrease wages from working.

There are various disqualifications for the work program. For example, a head of the household cannot participate if he or she is a full-time student, or is receiving unemployment compensation, or is a striker (unless not participating in the strike), or childless, or has left employment "without good cause" or was fired for cause or "malicious misconduct" during a 60-day period prior to application, or if the family's total income exceeds $5,600 annually.

The committee gave examples of the types of jobs that would be eligible for subsidization (those would be jobs paying below the Federal minimum wage). Some of the examples given were: Small retail stores (sales clerk, cashier, cleanup), small service (waitress, busboy, porter, counterman), domestic service, outside salesmen, public sector (recreation aid, park service workers, sanitation aid, police aid, family planning aid), agricultural labor. The committee, however, did not specify what jobs the Work Administration would provide for those who could not find jobs. It merely said that emphasis would be on "useful work which can contribute to the betterment of the community." It anticipated that many community "improvement activities" could now be undertaken with this "large body of participants."

What happens if the mother of a needy family fails to participate in the work program? She is still ineligible for AFDC. If the children are suffering neglect, then she can receive a payment for 1 month provided she is also receiving counseling aimed at persuading her to participate. If she is not persuaded to participate and is also not found to be incapacitated (which involves a mandatory referral to vocational rehabilitation), then the State can arrange for protective payments to third-party payees.

Unlike H.R. 1, which provided for the payment of welfare benefits to families who registered for work but were not yet placed, the Senate Finance Committee makes no such provision. It states that the effective date of the work program is to be January 1974. At that time, eligibility for "employables" for welfare will cease, and if these people cannot find jobs then they will receive a Government job. There is no middle ground or transition period. It is difficult to imagine how all of these millions of jobs will be created. If the jobs cannot be created in time, will the "employables" receive welfare benefits and if so, from the State welfare offices (as would probably be the case with those registering for work under H.R. 1)? Most of the administrative details of the SFC bill are not mentioned, and, at this writing, there is no accompanying legislation.

In addition to inadequate work incentives, the authors of the SFC bill believed that court decisions and HEW regulations are also principal contributors to the growth in AFDC rolls and costs. Thus, its proposed reforms for AFDC are to reverse specific court rulings and to reduce sharply HEW's supervisory role. The Senate Finance Committee's reading of recent history is that HEW, through a series of regulations, has made it "easier to get on welfare and harder to get off welfare," and that the States have vigorously, but unsuccessfully, opposed these regulations. Under the SFC bill, the committee promises that there will be specific statutory language limiting HEW's authority to issue regulations which, in the past, have "little basis in law and which sometimes have run directly counter to legislative history." We will discuss shortly the specific restrictions on HEW.

Although State power is to be increased under the SFC bill, there are some restrictions on AFDC. In general, eligibility is restricted. As previously stated, AFDC is not available for needy families if there are no children under six, nor is aid available for expectant mothers and their unborn children. Under present law, children can be placed with relatives who may then qualify for AFDC. Despite the fact that this device was used by the Supreme Court in upholding the practice of maximum grants per family regardless of size employed by many States,[16] the SFC bill would allow States to prevent such placing of children. Yet, the committee report is silent as to whether a State can still use a maximum grant. On the other hand, the States are prohibited from reducing benefit levels below $2,400 for a family of four, or if benefits are already below that level, from reducing them further. Another liberalizing provision is to require the adoption of the Social Security definition of "incapacity," which is a less rigorous definition than what is usually applied in most States.

The more detailed changes in the SFC bill will now be discussed in terms of specific controversial problems of welfare which, in addition to the work test, are the means test, desertion, man-in-the-house, the suitable home, and budgetary controls. For each of these areas we will compare three approaches. We will set out the administrative provisions which Prof. William Klein (UCLA Law School) and this author proposed for the President's Commission on Income Maintenance Programs (the Heineman Commission).[17] These proposals, which were drawn from many sources,[18] represent the kind of administration that could accompany a streamlined negative income tax replacement for AFDC. We will compare this approach with the administrative provisions of the Family Assistance Act and H.R. 1, and the Long bill. The purpose of this comparison is to show how discretionary administrative provisions are used to control deviant behavior and how the increase in administrative discretion fits our thesis about the distribution of Federal-State power in welfare administration.

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

[17] See J. Handler and W. Klein, "A Model Statute Reflecting the Recommendations of the President's Commission on Income Maintenance Programs;" in The President's Commission on Income Maintenance Programs; Technical Studies, (Washington: U.S. Government Printing Office, nd.).

[18] In particular, see "Comment: A Model Negative Income Tax Statute," 78 Yale Law Journal 269 (1968). Those familiar with the literature on welfare reform will recognize that the ideas contained in the model statute are by no means original to Professor Klein and myself, but have been set forth by many people in different contexts. To mention only a few, one could consult the work of Jacobus tenBrock, Charles Reich, Edward Sparer, Richard Cloward, Frances Piven, George Wiley, and the National Welfare Rights Organization, as well as many others who have been struggling for almost a decade now to improve the lives of welfare recipients.

The administration of the intake process reflects the most fundamental conceptions about the particular welfare program.[19] Do applicants have entitlements to benefits or is entry dependent upon a variety of conditions administered by officials with wide discretionary powers? Are people encouraged to apply for benefits which are theirs as a matter of right, or are secrecy about the program and stigma used as rationing devices? Are applications promptly and routinely processed, or are investigations and delays used to discourage seekers of relief? One can contrast the administration of social security where clients apply for earned pensions and officers calculate maximum allowable benefits with the various horror stories of the administration of AFDC and general assistance to capture the flavor of what is at issue in the administration of intake. It is clear why this problem has been one of the central points in efforts to reform welfare. Eminent war-on-poverty lawyers, the National Welfare Rights Organization, as well as many others, have sought to establish rights and entitlements to welfare with the reform of the intake process as one of the key mechanisms for accomplishing that goal.

Starting from this position, the model statute proposed for the Heineman Commission lays the basis for its intake procedures by stating that the goal of an income supplement is not only to assure a minimal income but also to provide that income in such a way as to establish and protect the recipient's personal dignity and legal rights, including the right of privacy. Recipients are to have clear rights to their allowances. Officials will have no power to withhold or modify allowances or impose conditions of their use. Needy families under this program are not considered undeserving, somehow at fault for their poverty. Indeed, quite the opposite is the case; rights and entitlements are established so that the poor do not suffer for the lack of jobs and opportunities.

The model statute sets forth the affidavit or self-declaration system for application. Under this system, the applicant fills out an application form and, in the absence of unusual circumstances, the welfare office is to take the applicant's word. The basic check on the reliability of the applications is by post audit on a random basis. The welfare office is not required to consider an application as properly filed if the information is so incomplete or unclear that eligibility and benefit levels cannot be determined, or if there is cause to believe that the statements made are untrue. On the other hand, the applicant is only required to furnish information which is reasonable and necessary and which does not violate rights of privacy. This provision is important because basic eligibility as well as the income and assets tests are very simple and straightforward; questions dealing with moral behavior, personal life, suitability of the home, and so forth, would be excluded.

Regardless of the simplicity of the forms, and even if investigations prior to accepting applications are to be prohibited, welfare can still be illegally rationed through administrative delays, refusals to act, and the lack of remedies for discouraged and defeated applicants. Accordingly, the model statute provides for short, rigid time periods

[19] See J. tenBrock and R. Wilson, "Public Assistance and Social Insurance—A Normative Evaluation," U.C.L.A. Law Review 237 (1954).

within which the welfare office must act, penalties on the office (payable to the applicant) for failure to act, and full procedural due process. If an application is properly filed, then payments have to be made either on the regular semi-monthly payment date or within 10 days, whichever is later.

If an application is not properly filed (that is, for some reason considered incomplete, inaccurate, or untrue), then notice has to be mailed within 5 days explaining why the claim is not accepted. There are provisions for the recovery of overpayments, but the welfare department is enjoined to consider the nature and source of the error as well as the circumstances of the recipient in seeking recovery. There are provisions for full due process hearings within specified time periods. If the welfare department fails to provide the hearings in time, then the aggrieved person is either entitled to the claim or can start a court action. In line with the Supreme Court case of *Goldberg* v. *Kelly*,[20] hearings must be granted before the effective dates of denials, modifications, or withholding of grants. Finally, the model statute makes detailed provisions concerning proper communication of welfare department rules and regulations, including procedural remedies.

As the model statute makes clear, reform of the intake process cannot be done piecemeal. An affidavit or self-declaration system can be rendered meaningless if complicated, or extraneous information is required, or investigations can still be made, or if delaying tactics can be used, or if the applicants have inadequate procedural protections or are ignorant of their rights.

For several years, when hopes for a substantive and procedural reform of welfare ran high, there was strong pressure to institute the self-declaration system for the AFDC intake process. However, these attempts were fought bitterly by the large State welfare bureaucracies; they insisted that the only method of controlling fraud at entry was through an investigatory intake procedure. The original Family Assistance Act was ambiguous on this issue, that is, whether there was to be a self-declaration or an investigatory system.[21] With H.R. 1, however, the matter has been resolved in favor of investigation. Although the actual statutory language is silent ("the Secretary shall prescribe such regulations * * *"), the House Ways and Means Committee states that it has agreements with HEW and the Department of Labor for a greatly expanded and refined investigatory intake process. Social security numbers are to be used to cross-check claims and verify earnings; there will be personal interviews by intake workers; there will be self-reporting on changes in circumstances on a quarterly basis with monetary penalties for failure to report or lateness in reporting; there will be mandatory termination of eligibility with reapplication every 2 years; and, in addition, a quality control program of sampling cases. Without belaboring the point, the most time-honored method of controlling welfare administration—the investigatory determination of

[20] 397 U.S. 254 (1970).

[21] For example, President Nixon, in his 1969 welfare message said:

"The new system [the proposed Family Assistance Act] will lessen welfare redtape and provide administrative cost savings. To cut out the costly investigations so bitterly resented as 'welfare snooping,' the Federal payment will be based upon a certification of income, with spot checks sufficient to prevent abuses. The program will be administered on an automated basis . . . ." President's message on welfare reform, White House press release, Aug. 11, 1969, p. 8.

eligibility—is not only to be retained, but strengthened. The rolls can be restricted through delays, the use of stigma, the rigorous enforcement of various tests, and periodic, automatic terminations requiring recipients to resubmit to the whole process again.

The SFC bill extends the power of the States to maintain the investigatory means test by recommending legislation that will systematically reverse various lines of judicial development that tended to establish greater entitlements for welfare recipients. One line of reasoning that was considered basic to the liberal position was that welfare was a property right and thus immune from certain kinds of legislatively imposed conditions. The Senate Finance Committee makes clear that welfare is to be considered a statutory right as distinguished from a property right. A statutory right, in theory, is a right granted by law and fully capable of being amended by law. Even though categorizing welfare as either a property right or a statutory right was never a fruitful line of endeavor, what the Senate Finance Committee is saying that is important is that welfare—for AFDC recipients—is a matter of legislative discretion, and that recipients are to accept welfare on the basis of legislative conditions or not at all. As stated throughout this paper, this attitude reflects a fundamental position about the nature of poverty, and is quite the opposite of that reflected in the Heineman Commission report.

The Senate Finance Committee then proceeds not only to allow the States to use the investigatory method of determining eligibility, but prohibits, by law, the use of the self-declaration method. Furthermore, the States are empowered to verify eligibility statements by independent or collateral sources and HEW is specifically enjoined from interfering with State verification procedures. As an incentive to the States to strengthen their procedures, the Federal Government will share the cost of fraud investigations. Finally, although a basic principle under the Social Security Act is that applicants have a right to decisions about aid with reasonable promptness, the SFC bill construes this principle as not interfering with the State's verification procedures. In other words, the States are to have a free hand in establishing and administering the kind of intake process that they want.

DESERTION

The failure of fathers to support their children is perhaps the single cause of most of the anger and frustration in current welfare politics. In reaction we make this failure a crime, and when that fails to work, we make it a Federal crime. The federalization of this crime would start with H.R. 1. At the present time, H.R. 1 only provides that it would be a Federal crime to cross State lines with intent to desert and that the Federal Government could obtain defaults from other Federal money due the defaulting parent. What is not specified in H.R. 1 is what information the mother would have to supply to the Federal law enforcement authorities and what cooperative steps she would be required to undertake.

The SFC bill would considerably strengthen the machinery to obtain support from absent fathers. As a condition of eligibility, mothers would assign their right to support payments to the Federal Government (the Justice Department) and would be required to cooperate in identifying and locating the father and in obtaining any money or property that may be due the family. If States were found to have effective programs for determining paternity and obtaining support, then the Justice Department could delegate its collection rights. Otherwise, the collection rights would be enforced by U.S. attorneys, in both Federal and State courts, and with the assistance of OEO lawyers. States would also be assisted in their efforts to locate absent fathers by making available the records of the Internal Revenue Service and the Social Security Administration.

In addition, the States would have a strong financial incentive to increase efforts to obtain support. Under present law, States have to refund part of the money collected to the Federal Government (the Federal share varies between 50 and 83 percent). Under the SFC bill, the States would keep the entire amount of support collected. To assist the States, they would have available to them Federal civil remedies, including the garnishment powers of the Internal Revenue Service. There would be Federal criminal penalties for failure to support with penalties of 50 percent of the amount owed to the family, or a fine of $1,000 or imprisonment for up to 1 year, or both.

The existence of State programs to collect from deserting fathers raises very complicated issues which are not necessarily resolved by the SFC bill technique of allowing Federal delegation to specially qualified State programs. State laws—both civil and criminal—dealing with abandonment are laws of general applicability; they apply whether or not the deserted family is on relief, or in spite of what relief program they may be on. For example, the Wisconsin statute, which follows the uniform act, states that:

> Any person who, without just cause, deserts or willfully neglects or refuses to provide for the support and maintenance of his wife or child under 18 years (legitimate or born out of wedlock) in destitute or necessitous circumstances shall be fined not more than $500, or imprisoned not more than 2 years, or both.[22]

Thus, unless issues of Federal preemption arise, there will develop two parallel, cooperative, perhaps competing systems of obtaining support from deserting fathers. Then, assuming that State welfare programs survive in the form of State supplementation, there is the problem of additional obligations imposed on State welfare recipients to track down the absent father. In many States, for example, welfare recipients are required to take a number of cooperative steps with the local law-enforcement officials; these steps may include taking lie detector tests and swearing out complaints. To what extent will these additional requirements be used in those States which would have both a Federal and a State program?

Federal-State conflicts in administering the absent father provisions will be worked out. The point, though, is that whatever sorting out does occur, this important, legally coercive instrument in welfare administration not only will remain but may well become more powerful.

If one accepts the assumptions behind the current efforts to obtain support from deserting fathers, then it would seem that the H.R. 1 and SFC bill approach is superior to some of the practices in the States. Under the proposed Federal approach, other than requiring some cooperative efforts from the mother, the burden would be placed

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[22] Wisconsin Statutes, 52.05.

squarely on the absent parent; the claim would be assigned to the Government, which would do the chasing and the collecting. The grant to the family would not be affected. This would be preferable to practices where more burdens are placed on the mother to collect and the family's grant varies with the amounts received.

The H.R. 1–SFC approach, however, creates incentives to desert by structuring the benefits so that a low-wage worker finds that his family is better off if he deserts, and then he is subject to specially administered support obligations. As stated above, the duty to support is a statutory obligation which applies to all persons. But it is only the absent parent whose family is on welfare that is subject to special treatment—IRS and social security tracking, Federal-State cooperative arrangements, U.S. attorneys, and perhaps even OEO lawyers. The sole purpose of this endeavor is to reduce welfare costs, which means that the poor and near-poor continue to bear the burden of the Government's double failure to provide adequate economic opportunities and to design a welfare system that does not encourage family splitting. As long as these conditions exist, then it would seem that no special support provisions should be used; the absent parent of a welfare family should be subject to the same general laws as the rest of society.

MAN IN THE HOUSE

With the means test and the absent father provisions, Federal and State interests run parallel. With the man-in-the-house rule, there is a clear conflict. Many States adopted either of two approaches. If a man was deemed living with the family "as the husband," the family was no longer considered a fatherless family and thus was ineligible. This was the man-in-the-house eligibility rule. Alternatively, the man's income and resources would be calculated in the family's budget for the purposes of determining the size of the welfare grant. This is the man-in-the-house budget rule. The U.S. Supreme Court and HEW declared both rules illegal under the Social Security Act.[23] The effect of the rulings was that the only thing that the States could do in these situations was to include the man's income and resources to the extent that they were in fact made available to the family. And this is essentially the position that H.R. 1 takes; States are not allowed to "deem" any income available to the family. This was also the position of the model statute: adults living together, other than as husband and wife, are not to be considered members of the same family either for purposes of aggregating family income or calculating the family allowance. The only exception is where there is a common child; then the adults are treated as a family unit.

Needless to say, there will be enormous pressure to change this rule. These living arrangements are anathema to the taxpaying public; yet the present rule is administratively unenforceable. How can an agency prove what, in fact, a family receives when money received—if any—will be in cash or in kind, and vary in frequency and amount? Presumption rules—in the form of "deeming" certain sums available—are the only method of enforcement. At a minimum, it would be assumed that the man is paying the rental value of his quarters. But other rules will have to be used.

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[23] *King* v. *Smith*, 392 U.S. 309 (1968); HEW regulations.

This is one area in particular where the States will have a significant interest in controlling administration, unless H.R. 1 is amended or HEW abandons its present view.

The SFC bill represents a complete reversal and a return to the original State position on this issue. The U.S. Supreme Court decision was one of statutory interpretation—what it thought Congress meant by the statutory language—rather than a constitutional holding and, therefore, Congress is free to reject the Court's opinion. The Senate Finance Committee authorizes the States to determine whether a man is a "parent" for the purposes of determining eligibility on "the basis of a total evaluation of his relationship with the child." The committee lists 10 factors that the States must consider in evaluating this total relationship. They include whether the individual makes frequent visits to the child's home, whether he and the child are seen frequently together, whether he exercises "parental control" over the child, arranges for the child's care when the mother is ill or absent, and so forth. Thus, if these provisions of the SFC bill were to become law, it would result in a return to the welfare investigations that were bitterly contested 5 and 6 years ago.[24]

SUITABLE HOME

Closely related to the man-in-the-house and desertion rules are the "suitable home" rules. Behind all of these rules is one of the most controversial problems in welfare—deviant sexual behavior and illegitimacy. Under the suitable home rules, an AFDC mother must be "fit and proper" which in practice usually turns on pregnancy. In some States, to lose eligibility on this ground, a court must find the home "neglected," within the meaning of the juvenile law. Although this is a fairly narrow legal definition if the matter is ultimately brought to court, it must be remembered that court challenges by welfare recipients are rare, and it is the administrative threat that is probably the most important. For example, Winifred Bell, in her book Aid to Dependent Children, described the Florida practice whereby the welfare agency persuaded mothers to "voluntarily" withdraw from AFDC on the grounds of failing to provide a "stable environment for the child, by engaging in promiscuous conduct either in or outside the home, or by having an illegitimate child after receiving an assistance payment." The agency accomplished this by offering the mothers the following choices: voluntarily releasing the children for placement, or leaving AFDC, or facing the threat of neglect charges. In 1965 Bell pointed out that Florida was at that time by no means unique in enforcing the suitable home rule. Michigan, for example, was alleged to have maintained for some time prior to that report a policy of keeping illegitimate children off the AFDC rolls.

Neither H.R. 1 nor the model statute have "fit and proper" eligibility rules. Thus, if H.R. 1 were enacted, there would be another instance of clear conflict between the Federal law and the State programs. In States where this issue is important, there will be resistance to making the Federal rules uniform in the States, or if there is to be uniformity, they will be more interested in administering

[24] See C. Reich, "Midnight Welfare Searches and the Social Security Act," 72 Yale Law Journal 1347 (1963).

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both programs. To the extent that the suitable home rules cannot be used, more pressure will be created to chase absent fathers and to increase the contributions of the man-in-the-house.

The SFC bill, on the other hand, goes part way in meeting State interests. The report states that its bill would require the States to make efforts to see that welfare grants are made in the best interests of the child, and that if the welfare agency has reason to believe that such is not the case, counseling and guidance services must be provided the family; and if these services fail to change behavior sufficiently, then the welfare agency must resort to protective payments. In other words, the family will not be faced with the threat of losing the children—as under present suitable home rules—but with loss of control over the grant.

BUDGETARY CONTROLS AND IN-KIND WELFARE (SOCIAL SERVICES)

Although a number of States have instituted simplified "flat grant" payment systems, in many States AFDC budgets are still calculated on an individualized basis. There are detailed, specific allowances for specified needs per family member. Detailed budgeting is designed not only to control overall costs but also to check what is thought to be wasteful or extravagant living. Thus, there are usually no allowances for television sets, or, in many areas of the country, telephones. This means, of course, that if a caseworker sees forbidden (not budgeted for) items in the house, the recipient is forced to come up with a satisfactory explanation or face possible fraud charges. The low-level, subsistence budget is supplemented in a number of States by special needs programs designed to meet emergencies—for replacement costs (e.g., furniture, appliances, etc.), special needs of people (e.g., laundry service, special diets), or for rehabilitation (e.g., training, education expenses). This type of financing—a subsistence budget plus requested special needs—is designed to maximize control over the budget even though one of the basic tenets of the Social Security Act was to provide cash grants instead of in-kind benefits to maximize client freedom. Some States—most notably New York and Massachusetts—eliminated special needs grants, reportedly because large numbers of clients were using them as routine income supplements.

The H.R. 1 (as well as the model statute) method of calculating family grants would eliminate this kind of State discretion. Payment levels, under the Federal approach, would be calculated on the basis of family size rather than need. There would be no reason for the family to have to justify how it spends its money, except insofar as certain expenditures might indicate unreported income or gifts. Some adjustments, however, would have to be made for a special needs program. Routinized money payments based on simple schedules may be a necessity when one is contemplating a federalized administration, but if hardship is to be avoided, there must be some method of handling special problems. The Federal grant would be very low and families in poverty simply do not have any margin of safety. The scheme in H.R. 1 would be to allow the States to develop a special needs program financed entirely out of State funds and run through State social services. If this plan were carried out, it would further complicate the already complex H.R. 1 administrative system. There would be Federal administration of the Federal family program. There could be State administration of the State supplementation. Then, there would also be State social services that would be administering a cash grant program for emergencies and special needs. Needless to say, there would be tremendous variety and unevenness in both the levels of cash benefits actually received by the recipients and the conditions under which they would receive them.

The special cash grant system illustrates one of the many problems of integration between the income maintenance program and social services. Most of the attention in the debates about the future of welfare policy has focused on income maintenance, with very little public attention paid to social services. Without going into the details, which are beyond the scope of this paper,[25] the direction for social services seems to be pointing toward separating services from income maintenance, dealing with a full range of family needs, but concentrating on the delivery of "hard" services, as distinguished from "soft" (i.e., counseling) services. Hard services refer to such things as day care, homemaker services, foster care, child protection, vocational rehabilitation, job placement, referral with followup, advocacy, as well as emergency assistance. Although cast in social service terms (i.e., rehabilitation), the harder the services become, the more the social service program will come to resemble in-kind welfare. The demands made on the resources of the social services will vary with the character of the income maintenance program. The lower the income maintenance grant, the higher the demand will be for emergency assistance and special needs. In fact, it could be quite likely, at least in some areas, for families to receive special needs on such a recurring basis that social services come to resemble a more or less permanent income supplement. In other areas, the converse would hold; social services would be very stringent about handing out extra cash. One could expect, therefore, marked variation in the benefit levels despite Federal uniformity in its income maintenance program.

Another point of program integration concerns the various job-related services and how they will be distributed in relation to the income maintenance work test. Would day care, homemaker services, and vocational rehabilitation to be tied into the work test of H.R. 1, or the SFC bill, or would they operate independently, or according to State work tests? Under both the SFC bill and H.R. 1, disabled alcoholics and drug addicts would have to submit to rehabilitation programs; would these be run out of the State social services? The most likely answer is in the affirmative—that the Department of Labor (H.R. 1) or the Federal Work Administration (the SFC bill) would contract with HEW and the State social services for all of the job-related services. This, in turn, would require a careful working out of interagency goals. A rehabilitation services agency would not be likely to devote its resources to restoring a patient's capacity so that he could take a menial job required by a work administration. The different agencies would tend to screen out referrals which do not further their particular goals. This is what happened with many State employment services under the WIN program; they rejected as "un-

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[25] These issues are the subject of my forthcoming monograph on the development of social services in Great Britain and the United States. See note 11 supra.

employable" many welfare referrals, preferring to work with those people who had the better employment prospects.

H.R. 1 raises the problem of integration with social services in the most acute form because not only would services be separated, but many of the features of H.R. 1 (particularly the work test) would require the use of services. The model statute also contemplates a full separation of services from income maintenance, but because there are no coercive features under that plan, problems of integration would be lessened. No one would have to take vocational rehabilitation services to satisfy a work test requirement. On the other hand, integration problems would still remain because social services would be distributing valuable in-kind benefits for dependent people. As stated before, levels of income maintenance benefits would affect demands made on these in-kind benefits.

The SFC bill would maintain the status quo; States would not be required to separate services from AFDC, but rather would be allowed to continue to use services to accomplish income maintenance goals. This is like the present system, but with one crucial difference. Under the present system, social services in AFDC have been virtually nonexistent. They are practically entirely "soft" or talking services and the program is so understaffed that social workers (actually untrained caseworkers) barely see clients more than three or four times a year for a friendly chat. Most individualized AFDC social services have been, by and large, nonthreatening, even mildly pleasant, but, for the most part, irrelevant.[26] Recently, through the authority to purchase services on contracts, "real" services have been set up for AFDC families. Under the new approach these "hard" services would be emphasized. As soon as services will have something to distribute that the clients need and want, they will become very salient for clients and very powerful tools for the welfare agency. The single agency will be able to manipulate not only the income-maintenance grant, but also the various other in-kind benefits to be made available under the "reform" of social services. The SFC bill approach solves problems of program integration better than the other approaches, but the question is integration for what purpose? We will return to this question at the end of the paper.

THE WORK TEST

The model statute does not have a work test. Instead, it assumes that if there is a sufficiently high demand for labor in the market, and the tax rates of the income maintenance program provide incentives to work, then the vast majority of welfare recipients would seek to improve their economic position on their own. Work tests, on the other hand, are seen as costly, fruitless, and punitive, especially when so much lack of work is the fault of governmental policies rather than recipient recalcitrance.

The Heineman commission approach, however, is not the way of welfare policy. From its earliest days, AFDC has had a work test. The tests were highly discretionary; work could be required provided it was not inimical to the best interests of the family, and the welfare agency decided that question. Since 1967, the effect on the part of

[26] See J. Handler and E. J. Hollingsworth, supra note 1, ch. 5 and Podell, Yahr, and Pomeroy, supra note 1.

Congress has been to try to shift the responsibility for getting mothers to work from the welfare agencies over to the Department of Labor.[27]

Under the WIN program, HEW (through the State and county departments of welfare) was required to refer welfare recipients to the Department of Labor (the State employment service) to register for work or training. Every member of an AFDC family aged 16 or over not in school full time had to be referred unless they were ill, incapacitated, or aged, or lived too far away to participate, or whose presence was needed in the home to take care of someone else.[28] However, despite these fairly narrow exceptions, HEW and some State welfare agencies interpreted the statute in such a way that only relatively few AFDC recipients (AFDC–U males and children over 16 not in school full time) were required to be referred; all else would be voluntary referrals.[29] At the same time, the Department of Labor, through its guidelines for accepting referrals, in effect took the position that if AFDC recipients did not want to accept work or training, they should be excused from the work test. A welfare recipient would not violate the work test if he or she had a "good cause" basis for refusing. Some of the good causes listed by the Department of Labor were "the mother's child care plan has broken down and alternative child care cannot be arranged"; "the job is not within the physical or mental capacity of the person"; or "acceptance of the assignment would be detrimental to the family life of the individual." [30] Under these guidelines, State employment service employees did not have to deal with reluctant welfare recipients.[31]

The results of the WIN program were disappointing in terms of what Congress expected. It felt that HEW was holding back in referring recipients to the employment service. On the other hand, there was considerable evidence from various parts of the country that some employment services were "creaming"; that is, they were accepting for work and training only those with the brightest prospects, and rejecting less qualified referrals.

The Family Assistance Act and H.R. 1 represent an attempt to cut down on welfare's gatekeeping role for employment referrals. Nevertheless, some gatekeeping decisions would still remain with welfare. For example, HEW regulations would spell out who is excused from registering by reason of age, illness, and incapacity, who is needed at home to take care of others, who is to be referred for vocational rehabilitation, and how day care is to be allocated. H.R. 1 is very vague as to how the referral process would work between the opportunities for families and family assistance programs, especially since the latter would handle the welfare payments for the OFP families, and since both programs might still be administered at the State level in the short term.

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[27] See J. Handler and E. J. Hollingsworth, supra, note 1, ch. 6.

[28] For an analysis of the WIN program, see L. Hausman, "The AFDC Amendments of 1967: Their Impact on the Capacity for Self-Support and the Employability of AFDC Family Heads," 19 Labor Law Journal 496 (1968).

[29] Proposed HEW Reg. 220.35, 34 Fed. Reg. (January 28, 1969).

[30] Manpower Administration, U.S. Department of Labor, Work Incentive Program Handbook (July 25, 1968).

[31] New WIN amendments effective July 1, 1972, attempt to further specify categories for WIN referral and establish added incentives for referral, training, and placement.

As with the WIN experience, one still must reckon with the bureaucratic demands of the manpower agency, whether that agency be the State employment service or a new federally created Work Administration. This problem is not solved merely by making the referral from welfare to the Labor Department mandatory because the question then becomes one of what will happen at the manpower service. If the manpower service does not want to work with a particular recipient, then some way may be found to find that person "unemployable" and to return him to welfare. Under the WIN program, the ability of Labor to reject was spelled out in the WIN guidelines. Under H.R. 1, there would be similar methods for finding particular recipients "incapacitated," especially if the work program were still run by the State employment service. On the whole, that service has displayed no zeal for spending a great deal of time and resources on the most marginal part of the labor force.

If a Federal Work Administration is created under the SFC bill, then how it will respond to the "referral back" problem will depend on the goals of that agency. If the agency is to be expected to get people into productive work—to reduce welfare costs by increasing earnings from the private sector—then the agency might tend to expand the use of "incapacitated for work" classifications to enable it to refer its more difficult cases out of guaranteed job opportunities and onto the State AFDC programs. By getting rid of its more costly clients, the Work Administration would thereby improve its performance record in getting its other clients into productive work. Another approach for the Work Administration might be to define its mission as employing as many people as it can regardless of cost; its achievement would be cast in terms of a kind of workhouse philosophy—if the able-bodied poor want welfare, then they will work for it. Under this approach, "incapacitated" for work would be very narrowly construed.

It seems likely that the first, and not the second, alternative would be adopted by the Work Administration. Aside from the fact that there is a widespread aversion to "leafraking" jobs, the second approach will prove to be both costly and troublesome to the new agency. The public employment jobs will cost $2,400 for a family of four as the basic cash grant. Added to this would be the cost of administering the job program for the head of the household, plus the day care, plus related social services. The Senate Finance Committee speaks only of a job for the family in the guaranteed job opportunity program, but the program would still be dealing with a family as well as the head of the household; and the family's needs would have to be taken into account. It is doubtful whether the Work Administration would develop into a full-blown welfare agency handling all of the nonemployment needs of its families; rather, it would probably contract for these services from the State welfare office. And when this happens, we once again would be approaching a situation fairly similar to that envisaged under H.R. 1, or, for that matter, under the present WIN program. The Work Administration (or the State employment service, as its delegate) would handle the job and/or training, and the State welfare agency would handle the welfare needs of the family. Since the prime force behind the SFC bill (as well as H.R. 1 and the WIN program) is to reduce welfare costs by increasing work effort, this pressure will be felt in the Work Administration, and it would respond by moving its most marginal families out of its program altogether. These families would be its most costly, and it would prove to be easier as well as cheaper to classify them as "incapacitated" than to move them from public sector jobs to private sector jobs.

Needless to say, the efforts of the Work Administration to refer back welfare recipients to the State AFDC programs would not be taken lightly on the part of the States. Under the SFC bill, the States would be funded by block grants which would eventually be reduced to reflect that proportion of the AFDC population shifted over to the Work Administration. If they were then sent back, the States would have to renegotiate the amount of the block grant since automatic adjustments in the block grants would only be made for changes in the State population. The Federal Government, then, would be faced with the choice of either financing these families at a higher cost in the Work Administration or increasing the amount of money to the States for AFDC.

When the referral-back aspects of the SFC bill become clear, one realizes how harsh this welfare reform proposal might prove to be. The Work Administration (or the State employment service for that matter) would be structured to strive to get welfare recipients into the private sector to reduce welfare costs. The most significant effort along these lines, however, would likely be to expand the definition of incapacitated to return the most marginal population back to the State AFDC programs. If the bill were enacted, the poor would face not only a continuing bleak private employment market, but also a potentially hostile public employment service. And the State AFDC programs to which they are sent would be almost entirely free of any Federal supervision and have back practically all of their old powers to regulate behavior. There would be a much more rigorous means test, expanded programs to chase absent fathers, man-in-the-house rules, budgetary controls, and the use of social services to accomplish income maintenance goals. Returning to the analysis at the beginning of the paper, the SFC bill is clear in its conception of the nature of poverty. It is dealing with the "undeserving poor," and its program is designed to control deviant behavior.

In traditional, classical welfare policy, welfare for deviants (those who are able bodied but do not earn a living in the private sector) is to be administered at the State and local level, is to be highly discretionary, and is to have the traditional punitive, regulatory measures of welfare.

The Demogrant

The demogrant is a completely different approach to income maintenance. The basic idea is that a cash benefit (the demogrant) is paid to all residents (citizens or resident aliens) without regard to need. There is no income or assets or any other kind of means test. There are a number of different ways to structure the program. The benefit could be fixed at a uniform amount and payable to all persons, or it could be paid to children only (this would be a children's allowance), or the amount of the grant could vary by a person's age, or whether persons are adults or parents or children, or even whether they are the first or second child in the family as compared to subsequent children. Regardless of the variations, however, the basic feature of the "true" demogrant system is that persons are selected for benefits on the basis of demographic characteristics only; once selected, administration is completely routinized: that is, payments in fixed amounts are made without any other conditions or qualifications.

Cash benefits to all persons regardless of income become immensely costly, and for this reason, demogrant proposals are usually accompanied by proposals to reform the income tax to raise the necessary revenue.[32] It is also proposed that several welfare programs (for example, AFDC, unemployment compensation, food stamps, and so forth) could be eliminated as redundant; these eliminations would reduce the total gross costs of the demogrant.

As stated above, it is usually assumed that the administration of the demogrant would be highly routinized. The eligible person would receive his or her check by mail and at the customary time, file the income tax return. Furthermore, since the tax reform accompanying the demogrant system is Federal, it is also assumed that the administration of the demogrant would be Federal. Of course, neither of these administrative features are inherent to a demogrant system. There is no compelling reason why the States could not be in charge of the distribution of the benefits and the Federal Government in charge of the revenue intake. And the routinization of the distribution of the grants depends on how condition-free eligibility remains. For example, if benefit levels are equal for the first two members of the family, then the single person feels slighted because it is usually assumed that two people can live more cheaply together than separately. On the other hand, if economies of scale are taken into account, and the benefit level for the second member of the family is less than the first, then there are incentives for the family to split in order to increase their income. However, if the demogrant system takes this latter approach, then the welfare "man-in-the-house" family-splitting problems will have to be dealt with. Incentives for family splitting (the placement of children with relatives) will also arise if grant levels are reduced by size of family—that is, if the third, fourth, fifth, and additional children receive less than the first and second child. Family-splitting problems could be lessened administratively, however, through an adequate system for uniquely identifying each entitled person.

Another possible condition has to do with work or voluntary poverty. Under a true demogrant system, the issue of voluntary poverty is handled by keeping both the benefit level and the positive tax rate sufficiently low to avoid creating disincentives to work. Once these features of the system are set, then the issue of voluntary poverty, as far as individual recipients are concerned, becomes irrelevant. But voluntary poverty has been considered relevant in 400 years of welfare policy. There is no reason why a work test could not be attached to a demogrant system for certain categories of recipients. Then we would be getting a "mixed" welfare system—a true demogrant system for the "deserving" poor (however defined) and a work-tested (means-tested? other tests?) system for the "undeserving" poor. The point is obvious: a demogrant system can be a radically different income maintenance program *if* it is kept condition-free. Conversely, it can be

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[32] See, for example, E. Rolph, "A Credit Income Tax" in Poverty Policy (Marmor, ed., Aldine-Atherton Inc., Chicago, Ill., 1971).

converted to a system very closely resembling the present welfare system (with a new glossary of labels) depending on how many of the traditional conditions of welfare are made applicable.

The true demogrant system contemplates the elimination or reduction of many other cash and in-kind programs which are in some sense duplicative—for example, food stamps and commodities, Federal unemployment compensation, and the Federal portion of public assistance. Other income-maintenance programs would probably remain. Why would they remain? Judgments are made that certain social needs are of such special importance that special financing provisions are required to insure that these needs are met. For example, under the universal demogrant plan, a judgment might be made that no special provision is needed for the food for a poor family. If they cannot be relied upon to provide for their own food out of the grant (and whatever other source of income they might have), then they go hungry. But, this laissez-faire policy cannot be carried to the ultimate. For instance, school feeding programs might be continued so that the educational process is not disrupted by improvident parents who fail to feed their children properly.

The school lunch program is illustrative of a major problem of any universal, routinized system of income maintenance—that of providing special treatment for special cases. We have already discussed this issue concerning the relationship of social services and in-kind benefits to income maintenance, in the previous section. The same issue applies, of course, to a demogrant plan. Society will determine from time to time that certain social needs still will not be adequately met and that special provision will have to be made. We may expect that demands for these special programs will vary with the basic level of support. Given our past traditions in welfare politics, we may expect the retention and creation of special programs on the basis of humanitarianism for certain classes of unfortunates or common sense or special political deals for sufficiently powerful special interest groups. And all of the special programs will raise program integration problems, some more serious than others.

According to the analysis of this paper, State interests in controlling the administration of the demogrant system should vary with the amount of administrative discretion left in the system. If the system is routinized and condition free, then, under traditional welfare policy, the administration would be federalized and regulating deviant behavior (that is, controlling voluntary poverty) would not be at issue. To the extent that the political issue of giving money to so-called deviants still remained at least a residual problem, the States would have less of an interest in maintaining responsibility for administering the benefits to these people because they would lack the power to regulate behavior, that is, to respond to political pressure to do something about welfare. Conversely, if the demogrant system contained many of the discretionary welfare conditions, then giving demogrants to certain categories of poor would still be a political issue and the States would want to retain the administrative authority to respond to the political issues.

A similar type of analysis would apply to the surviving State welfare programs. A demogrant system may choose to leave the State programs alone (except to prohibit State rules which undermine the demogrant system itself). The States would then have great leverage in dealing with their own welfare problems. Conversely, to the extent that a demogrant system imposed uniform Federal rules on the surviving State welfare programs, it would seem that the States would be less interested in maintaining control over their welfare programs. They would be saddled with the responsibility for dealing with the welfare problem but lack the administrative authority to respond. In this situation, they would be more likely to press for a complete Federal takeover, including of course, the financing.

The Trend of Welfare Reform

Reviewing, then, the major welfare reform proposals during the last 3 years, one sees a continuing tendency to categorize the poor, a strengthening of the more regulative conditions of welfare under the SFC bill, and a continuing State role in welfare administration. In fact, if one looks at the welfare legislation enacted over the last two decades—when AFDC first started on its crisis course—the SFC bill is consistent with the steady direction of welfare policy and the original Family Assistance Act of 1970 was aberrant. One can start with the Jenner amendment of 1951, which allowed the States to open the welfare rolls to prosecutors to track down defaulting fathers,[33] to the Notice to Law Enforcement provisions, to the various work tests, to see the consistent pattern—authorizing States to institute regulatory controls to check alleged welfare abuse and rising welfare costs. Even the 1956 and 1962 social service amendments fit this mold: dependency (i.e., welfare costs) would be reduced by the States applying reformation programs.[34]

Both the growth of welfare conditions and the decentralization of administration support our thesis that providing relief to this particular class of the poor (husbandless families) is considered a problem of controlling deviant behavior which requires discretionary authority, and that both the Federal and State governments have a strong interest in having that discretion exercised at the State (and local) level. The Family Assistance Act of 1970, in many respects, sought to change this pattern. That proposal attempted to break down the categories by lumping the husbandless families with the poor (and often working) intact families, by eliminating a great many of the conditions of relief, and by pointing toward a Federal administration. But had popular attitudes toward AFDC shifted to support such a dramatic change in treatment? The proponents of the Family Assistance Act thought that by breaking the categorical barrier, the AFDC poor would partake of the supposed political acceptability of the working poor. For reasons which I have spelled out elsewhere, this gambit failed.[35] The next time the Family Assistance Act went through the House Ways and Means Committee, many of the conditions of welfare were reasserted. And whatever ambiguity H.R. 1 may have contained on this score—that is, how the deviant poor were to be treated—was cleared up by the Senate Finance Commit-

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[33] For a history of the Jenner amendment, see G. Steiner, supra, note 2, pp. 90–99.
[34] Steiner, op. cit., pp. 38–43.
[35] J. Handler. Reforming the Poor, pp. 151–52.

tee. Those who seek relief must work, and those who cannot work are to receive their relief under plenary State administrative control.

The answer to the question, then, of how we can establish Federal administrative control over welfare involves the problem of political will rather than technical problems of integration. The conceptual and technical difficulties in providing for a Federal system of welfare can be resolved.

The major proposals that we have discussed set forth a series of alternative arrangements. The Heineman Commission Report, with the accompanying model statute, spelled out a routinized, federally administered negative income tax approach to welfare. Not all of the problems of program integration would be solved. In addition to the surviving State welfare programs, there are probably hundreds of other welfare programs in the various layers of government that touch and concern the multitudes of people on relief. And indeed, one could expect the continued proliferation of various kinds of welfare programs along the edges of the basic income maintenance system. But relatively speaking, these problems would be minor in comparison to the incredibly complex administrative arrangements that we now have.

The original Family Assistance Act of 1970 set out a relatively condition-free negative income tax approach, provided an opportunity for Federal administration, and would have imposed more uniformity on State welfare programs. As passed by the House of Representatives, this measure would have proved costly to some States (their welfare rolls would have expanded under the more liberal Federal rules) and they would have lacked a good deal of administrative discretion to cope with their welfare problems. If this legislation had been enacted in that form, there would have been incentives for the States to press for a complete Federal takeover. Lacking the power to deal with the welfare mess, why have the responsibilities?

H.R. 1 destroyed this incentive in two significant respects. It reintroduced more discretionary welfare conditions in the basic program, and it removed Federal restraints on the surviving State programs. Thus, the States not only would have strong incentives to retain their programs, but also to attempt to assert control over the Federal portion as well. The SFC bill carried the H.R. 1 approach a step farther by removing more restraints on State programs and reasserting full State power over welfare administration.

If we include the demogrant proposal, the country then has a number of clear choices as to how administrative power over welfare should be distributed. What alternative the country will choose and ought to choose depends upon what one believes to be the society's attitudes toward the poverty problem. The evidence seems most persuasive that the poverty problem is still viewed in terms of regulating deviant behavior. The rhetoric of welfare reform speaks this way, even including the political statements acompanying the original Family Assistance Act. Then, while Congress remains stalemated over welfare reform, activities on the State level to increase control are growing. New York City, for example, has adopted more stringent work tests (including working by general assistance recipients for the basic welfare grant) and more bureaucratic controls to ferret out welfare fraud, and it has been suggested by local authorities that due process in welfare hearings should be curtailed to save welfare costs. These events indicate that the traditional way of administering relief through a discretionary, conditioned program at the State and local level is likely to continue.

The argument is made, however, that even though the country still views the welfare poor as "undeserving," the welfare mess has become so burdensome politically and financially to the States, that they are unable to exercise meaningful control over deviant behavior and would be willing to turn over full administrative authority to the Federal Government. Various Governors and organizations have gone on public record as favoring a full Federal takeover. The extent to which these views accurately reflect the true position of the various States cannot be determined here. Governors and even top welfare officials may not be speaking for legislatures, welfare bureaucracies, and local government when real choices have to be made. Furthermore, expressions for a Federal takeover were made prior to the SFC bill, and may have reflected, at least in part, State frustrations in controlling the welfare problem in view of Federal regulations. The SFC bill offers the States more administrative power (including increasing the Federal share of the cost of this administration), and this may alter their future willingness to let go of welfare.

Besides, even if the States still feel inclined to get rid of welfare, does the Federal Government really want to assume administration? The problem of what to do with dependent children in deviant households has plagued government for over 400 years. Why should the Federal Government take on this insoluble problem? The actions of the Senate Finance Committee indicate that they feel the Federal Government should not. The Federal Government will handle the Work Administration; and if "properly handled" (that is, by skimming off the most employable and throwing all of the rejects back on the State welfare programs), that program can show a success. And the States will continue to be saddled with the true welfare problem—as distinguished from the unemployment problem—by the classic legislative technique of delegation.

Although advocates of the poor may not like the committee's approach, the question remains of whether or not Federal administration of welfare is desirable. If poor families achieved "deserving" status and the program would be relatively condition-free, then these advocates would favor strong Federal administration. The principal argument in favor of Federal administration is more efficient bureaucratic controls so that the program is administered according to the law—that is, routinely, uniformly, and fairly. These administrative objectives are always problematic with State administration under present techniques of monitoring and control. HEW was rarely able to enforce compliance with Federal rules even when it attempted to press for legality. But, if the poor are still considered "undeserving" and the welfare system is to be regulatory, then do we want bureaucratic efficiency? The Federal bureaucracy is nice and humane to most social security recipients and veterans, but has an unenviable record when dealing with what it considers to be deviants—for example, political radicals, certain categories of immigrants, and minority groups. A Federal welfare administration might well resemble the Immigration Service more than the Social Security Administration.

If one agrees that the welfare poor are still considered "undeserving," then the poor might very well be better off under the decentralized, inefficient State administrations. For most welfare recipients, the harsh regulatory rules will be irrelevant because the administration will lack the resources to enforce the rules. At the present time, despite the legislation and multivolume Department of Welfare manuals, AFDC is a nonregulatory program. The shortage of caseworkers, as well as their indifference to the job (turnover is very high), insures the most minimal enforcement of rules for most welfare recipients. This is not a desirable situation since the rules are enforced from time to time, often for unworthy reasons, but it may be a more preferable situation for most recipients than an efficient bureaucracy carrying out harsh rules. Until the day for generous treatment of the poor is at hand, I believe the strategic retreat would be to keep welfare administration complex, working at cross-purposes, and starved for staff.

WELFARE LAW: NARROWING THE GAP BETWEEN CONGRESSIONAL POLICY AND LOCAL PRACTICE

By PETER E. SITKIN*

INTRODUCTION

This paper is a case study concerned with the difficulties encountered by the Federal Government in properly controlling and enforcing its grant-in-aid programs. To illustrate the general problem, this paper focuses upon the administration of the welfare system and the failure of State and local governments to adhere to the requirements of Federal welfare law.[1]

One common explanation for this failure regards the nature of bureaucracy and the decentralized and complex society we live in as the source of the problem. With an ever-growing set of rules and regulations and conflicting policies, there is little doubt that the complexity of the system contributes to the failure to implement congressional policy at the local level.[2]

However, there are other explanations. The reluctance of the U.S. Department of Health, Education and Welfare (HEW) to take aggressive action and the lack of court cases for many years led the States to believe that little effective action would be taken to enforce Federal requirements.[3] Until 4 or 5 years ago, there were no significant court cases and hardly any organized recipient activity.[4] Although

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[1] Other commentaries have pointed out that failure to conform to Federal law and thereby to the will of Congress is not limited to the welfare system. See, e.g., Tomlinson and Mashaw, "Report in Support of Recommendations on Enforcement of Federal Standards in Federal Grant-in-Aid Programs," prepared for Committee on Compliance and Enforcement Proceedings, Administrative Conference of the United States, Washington, D.C., hereinafter referred to as the "Administrative Conference Report". Oct. 22, 1971. See also Ronfeld and Clifford, "Judicial Enforcement of Housing and Urban Development Acts," 21 Hastings Law Journal 317 (1970).

[2] Sen. Clifford P. Case, after receiving HEW's *Handbook of Public Assistance Administration*, stated at Senate Appropriations Committee hearings on August 4, 1970: "I was appalled to receive a package of regulations weighing almost six pounds, as thick as the Washington, D.C., telephone directory. Leaving the human element aside, this handbook is the best possible evidence that the present welfare program is a bureaucratic nightmare." State welfare regulations are still more extensive than the Federal regulations.

[3] See Iglehart, "Welfare Report/HEW pushes regulation compliance, but State resists, problems multiply." 3 National Journal 401, p. 403, (Feb. 20, 1971). (Hereinafter referred to as "National Journal Welfare Report").

[4] See, Book Review, Freedman, 72 Columbia Law Review 207 (1972).

HEW has begun to take steps to achieve compliance in a handful of States,[5] its record is far from satisfactory.[6] Similarly, although there has been a great amount of welfare litigation, a gap between the requirements mandated by Congress and HEW and the actual administration of the welfare system at the local level continues to exist.[7]

While there undoubtedly are other explanations for the divergence between Federal policy and State action, including fiscal constraints,[8] the fact remains that the will of Congress has not been fully implemented at the State and local level. Of equal importance is the fact that welfare recipients have been deprived of many of their entitlements as a result of the failure of local administrators to conform to the requirements of existing law. Thus, whether the existing system of public assistance is continued or a new system such as H.R. 1, negative income tax, or a work-relief program is enacted, the problem of conformity to the requirements established by Congress in all likelihood will continue.

Therefore, this paper will make a number of suggestions which may aid in remedying the conformity problem, which is endemic in any decentralized income maintenance system. To provide the context in which these suggestions may be evaluated, it will be necessary to provide a detailed description of the problem, focusing upon a number of illustrative cases derived from California, the State with the largest recipient population.[9]

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[5] See, *National Welfare Rights Organization v. Richardson*, Civ. No. 2954–69 (D.D.C., filed Oct. 15, 1969) (dismissed Dec. 18, 1970) which most observers agree spurred the recent series of HEW conformity hearings. Seven hearings were called between November 4, 1969, and October 10, 1970, involving Nevada, Connecticut, Arizona, California, Indiana, Nebraska, and Missouri. Prior to that period, hearings were rarely, if ever, held. See, Altmeyer, The Formative Years of Social Security, University of Wisconsin (1968), p. 75 et seq.

[6] The quarterly HEW Compliance Report for October 1, 1971, lists "questions raised on State compliance with Federal requirements" for approximately three-fourths of the States. For example, in North Carolina, one "question" declares: "The State Department of Social Services has not submitted plan material to meet this (fair hearing) requirement. State policy does not provide for continuation of assistance pending a final fair hearing decision by the commissioner or for group hearings, if requested by recipients." In Ohio, "standards of promptness for disposition of (fair) hearings are not met." In Wisconsin a "question" declares: "Legislative reduction of income and resource levels for medically needy below money payment levels put (sic) State plan in conflict with Federal regulations. Legislative change required." And in New Jersey the "State plan has the effect of imposing a limit or cut-off on amount of earned income to be exempted to (sic) purposes of determining eligibility and amount of payment in AFDC." Questions of noncompliance cover a wide range of issues. Those given as examples here were selected because they resemble California lawsuits described infra or because they are especially graphic in their descriptive terms.

[7] See National Journal Welfare Report, supra.

[8] See Gilbert Dulaney's statement on the administration of the Fulton County Department of Family and Children Services before a June 1972, hearing of the Subcommittee on Fiscal Policy of the Joint Economic Committee (Problems in Administration of Public Welfare Programs, part 3, pp. 1041–1052). Dulaney cites the difficulty of efficient implementation at the county level of a multitude of regulation changes promulgated by a "matrix" of Federal and State agencies, including HEW, DOL, HUD, and USDA. Dulaney also discusses the problems posed by the rapidly expanding workload, the rigid State personnel merit system, and of course, recent court decisions.

[9] In June 1972, California had 2,017,542 recipients of money payments through OAA, AB, ATD, and AFDC. New York had 1,565,714 recipients in those programs. "Public Assistance Statistics, June 1972," HEW Publication No. (SRS) 73–03100, NCSS Report A–2, issued Oct. 3, 1972. See tables 4, 5, 6, and 7.

I. A Review of the California Experience

A. *Some Preliminary Observations*

Over the last several years there have been numerous court cases, administrative hearings, and recipient campaigns challenging rules and practices of the California Department of Social Welfare. Many of these actions involved honest differences between the parties as to the meaning, intent, and scope of Federal and State welfare requirements. Given the complexity of the system and the great number of rules and regulations, such disagreement has been inevitable.[10]

However, this review of the California experience will not deal with those cases. Rather, the focus of this paper will be on several of those cases where the State and local welfare departments deviated from clearly defined Federal and State legislative welfare requirements. Here we will deal with situations where courts found there was little real controversy as to the meaning of the statutes in question.[11] The cases chosen for examination here represent especially egregious violations, but they are by no means the only cases which could have been selected to demonstrate the theme.

B. *Illustrative Cases*

The following examples will be discussed in detail:

1. Cases affecting the level of welfare payments

(*a*) Congress required that AFDC maximum grants be raised effective July 1, 1969, to reflect increases in the cost of living, but California did not comply for almost 2 years.

(*b*) Congress provided incentives for welfare recipients to work, but California violated both Federal and State law in denying recipients their proper work incentives.

2. Cases involving the procedural rights of welfare recipients

(*a*) Federal law required California to provide recipients with notice and hearing before their benefits were terminated or reduced, but California failed to meet those requirements. Its failure and the resulting administrative chaos cost the taxpayers of California millions of dollars.

(*b*) Federal law required an administrative fair hearing decision to be rendered within 60 days of the request, but California took 6 months or more to render its decisions.

1. Cases affecting the level of welfare payments.—To appreciate the significance of these cases, it is essential to describe briefly the setting

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[10] Of course, a simpler system and an elimination of levels of bureaucracy would aid in reducing the amount of controversy. See below. Even then the nature of this society is such that there will be some litigation and controversy.

[11] There have also been important constitutional challenges to welfare statutes, regulations, and practices. See e.g., *Burns* v. *Montgomery*, 394 U.S. 848, 89 S. Ct. 1623 (1969), where the Supreme Court invalidated California's welfare durational residency requirement on the grounds that it violated the constitutionally protected right to travel and the 14th amendment's guarantee of equal protection of the laws; see also *Wheeler* v. *Montgomery*, 397 U.S. 280, 90 S. Ct. 1026 (1969), where the Supreme Court held that the due process clause of the 14th amendment requires that welfare recipients be afforded an evidentiary hearing prior to termination of their benefits.

in which the cases arose.[12] During the period in question, 1968 through 1971, the California Department of Social Welfare under California law was required through the 58 county welfare departments it supervises to make payments to needy children under the AFDC program.[13] The department was charged with determining each recipient's minimum need.[14] In making that determination, the department computed for each county a "Cost Schedule for Family Budget Units." This cost schedule set forth amounts representing the allowances for the following items: Housing, food, clothing, personal needs, recreation, transportation, household operations, education and incidentals, utilities, and intermittent needs.[15] In practice, the amounts contained in the cost schedules did not reflect the actual average minimum cost of many items in the standard, and, in a number of instances, the amounts were grossly inadequate.[16]

Once a family's needs were determined by the use of a cost schedule (and any special nonrecurring needs were added), the county welfare department calculated the amount of nonexempt income the family had available. If the family's minimum need exceeded its available income, the family met the "need" requirement for AFDC eligibility. In that case, a family was to be paid the amount of its minimum need (or that amount of its minimum need not met by available income) unless that amount exceeded the ceiling on aid payments established by section 11450 of the Welfare and Institutions Code. This statute arbitrarily placed a limit on the amount of money the State would pay an AFDC family regardless of the amount of the family's State-determined minimum need. This ceiling is commonly referred to as a "maximum grant." [17]

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[12] The method of welfare payments here described was altered by the California Welfare Reform Act of 1971, Cal. Stats. 1971, ch. 578. At that time a system of flat grants, by which all items of need were consolidated into a statewide average need, was established. A system of maximum grants still remains, however. See n. 17, *infra*.

[13] Cal. Welf. & Inst. Code §§ 11450, 11452, and 11454.

[14] Cal. Welf. & Inst. Code § 11452.

[15] California Department of Social Welfare, "Manual of Policies and Procedures," § 44–221.1–.21 and, generally, all of division 44 of the manual.

[16] Food allowances on the average were substantially below the levels set by Welf. & Inst. Code § 11452. Each recipient's monthly transportation allowance (set in 1950) was $1 (less than the cost of three round-trip bus fares in San Francisco). As to the inadequacy of the housing allowances, see *Ivy* v. *Montgomery*, San Francisco County Superior Ct., No. 592705. (Judgment entered Sept. 11, 1969.)

[17] The maximum grants payable under the then-existing statute, Cal. Welf. & Inst. Code § 11450(a), were as follows:

Children living with one parent or other relative

Number of children:	*Amount*
1	$148
2	172
3	221
4	263
5	300

Under the Welfare Reform Act of 1971, the maximum grant system was retained. The maximum grants were raised to $190 for a two-person family and $280 for a family of four with corresponding increases for all other families. However, the act provides that outside income is to be deducted from the maximum grant ceiling rather than from the higher need level in determining the AFDC aid payment, thereby resulting in aid reductions for families who have outside income.

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Approximately one-half of the recipients of AFDC in California, by virtue of the maximum grant limitation, subsisted on incomes that were below their State-determined minimum needs.[18] This fact, coupled with the realization that the State standards of need were set far below the amounts actually necessary for a minimum basic standard of adequate care,[19] placed the necessity for a raise in welfare grants beyond debate.

The best known of the efforts to secure AFDC grant increases in California was the protracted effort to compel the State to comply with the mandate of Congress to increase AFDC maximum grants effective July 1, 1969, under 42 U.S.C. § 602(a)(23) (commonly referred to as 402(a)(23)).[20] Congress passed the compromise amendment to the Social Security Act on January 2, 1968. The statute required that the States, by July 1, 1969, increase their need standards and their maximum grants to reflect the changes in the cost of living since those maximums and need standards were last established.

The history of the effort to force California to comply with the clear requirements of Federal law illustrates much that is wrong with the existing mechanisms (administrative, legislative, judicial, and organizational) that are available to secure compliance. The effort to secure increased grants eventually was successful. However, implementation of the statute was not achieved until almost 2 years after the date Congress had set for compliance, and then it was achieved only after efforts of the Federal courts, the California courts, HEW, and organizations of welfare recipients coalesced to effect compliance. Even those observers viewing the situation with perspectives different from those of welfare recipients must acknowledge that something is amiss when a Federal statute is disregarded for almost 2 years.

The correct interpretation of the statute has been the subject of extensive litigation in other States and the subject of several U.S. Supreme Court decisions, but its application in California was never in doubt.[21] Indeed, the fact that the obligation under the Federal statute

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[18] *Kaiser* v. *Montgomery*, 319 F. Supp. 329 (D.C. N.D. Cal. 1969), *vac.* and *rem.* on other grounds, 397 U.S. 595, 90 S. Ct. 1349 (1970).

[19] See Poverty Amid Plenty: The Report of the President's Commission on Income Maintenance Programs. November 1969, p. 14 et seq.

[20] The statute which required the grant increases reads as follows:
"A State plan * * * must * * * provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted." § 402(a)(23), Social Security Act of 1935, as amended, 81 Stat. 898, 42 U.S.C. § 602(a)(23) (1964 ed., Supp. IV).

[21] The controversy surrounding 402(a)(23) involved HEW's interpretation of the statute. Under 45 C.F.R. § 233.20(a)(2)(ii), HEW allowed a State which had maximum grants to avoid the fiscal consequences of a grant increase by increasing its standard of need and then converting its payment system to one of percentage reduction. By this "ratable reduction," all recipients are paid the same percentage of their need amounts, and the arbitrary features of dollar maxima are eliminated. Numerous States took advantage of this opportunity to convert to the percentage reduction system, choosing to avoid greater fiscal outlays in exchange for the political liability of presenting clearly for the first time the gap between the State-determined family need and the actual payment to the family. For a full discussion of this issue, see *Rosado* v. *Wyman*, 397 U.S. 397, 90 S.Ct. 1207 (1970) and *Jefferson* v. *Hackney*, 406 U.S. 535, 92 S.Ct. 1724 32 L.Ed. 2d 285 (1972). As indicated previously, California never adopted a valid percentage reduction system, and it still maintains a system of dollar maxima.

was clearly known and understood by California welfare administrators was admitted by a former high official of the Department:

It was clear to me prior to July 1, 1969, and at all times thereafter, that section 402(a)(23) required that both the standard of assistance and the maximum grants be raised to reflect changes in cost of living by July 1, 1969. It was clear to me that if California continued to maintain a system of dollar maximums, those maximums had to be raised.

Not only were the requirements of [402(a)(23)] clearly known to me, but I know of my own personal knowledge that they were known to * * * who was the Director of the State Department of Social Welfare from 1967 to December 1, 1969. I also know of my own personal knowledge that those requirements were also known to * * *, the present Director of the State Department of Social Welfare. All key staff in the Department were also aware of the requirements of Federal law as outlined above and understood California's obligations under the Federal law. They were made aware of the requirements of Federal law through HEW regulations, letters, memorandums, and periodic meetings with HEW officials as well as their own staff at executive meetings. Meetings with representatives of the HEW regional office were usually held monthly and all major issues were brought to the Director's personal attention, including California's obligations under § 402(a)(23) of the Social Security Act.[22]

As noted above, the statute passed by Congress gave the States 18 months to meet the requirements imposed by the Congress. Thus, the States were given ample time either to modify their payment systems pursuant to the HEW regulations or to adopt appropriate enabling legislation or regulations to secure compliance. By the late spring of 1969 it became apparent that California was not going to adhere to the July 1, 1969, federally mandated date for increase of welfare grants. The July 1 date came and went, but there still was no compliance by California and no action by HEW to enforce the Federal requirements.[23]

On August 6, 1969, a lawsuit was commenced in Federal district court on behalf of all California AFDC recipients to require the State to conform to the requirements of 402(a)(23).[24] Efforts both organizational and political were made to force either HEW or the State into action. California strenuously resisted the lawsuit and was successful in delaying any rapid judicial relief. HEW, although aware of nonconformity, did not take any action against California.

In the fall and spring of 1969–70 HEW began to write letters of inquiry to California but still took no positive action. Because the requirements of section 402(a)(23) were not being met in a large number of States, the National Welfare Rights Organization (NWRO) filed suit against HEW to force the Federal agency to take steps to secure compliance.[25] In apparent response to the suit by NWRO, HEW finally began the long and cumbersome process of exercising the only

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[22] Affidavit of Marion Chopson, former Chief of Income Maintenance Division of California Department of Social Welfare, in support of plaintiffs' motion for partial summary judgment and preliminary injunction, September 4, 1970. *Bryant* v. *Carleson, sub nom. Bryant* v. *Martin*, No. 51909–AJZ, N.D. Cal. (C.T. 414 [25]–415[14]).

[23] See Rabin, "Implementation of the Cost of Living Adjustment for AFDC Recipients: A Case Study in Welfare Administration," 118 University of Pennsylvania Law Review 1143.

[24] *Bryant* v. *Montgomery*, No. 51909–AJZ (N.D. Cal., filed Aug. 6, 1969) (hereinafter referred to as *Bryant*).

[25] *National Welfare Rights Organization* v. *Richardson*, Civ. No. 2954–69 (D.D.C., filed Oct. 15, 1969) (dismissed Dec. 18, 1970).

sanction available to it under existing legislation.[26] On July 8, 1970, California was notified that a hearing would be held on several issues of nonconformity with the Social Security Act, the most important of which was the noncompliance with section 402(a)(23).[27]

On August 25, 1970, the hearing was held in San Francisco, some 13 months after Congress had required compliance. California attempted to convince the Federal court to defer any action on the recipients' claims until HEW had an opportunity to act.[28] This tactic failed because the Federal court recognized that the HEW sanction, termination of Federal funds, was extremely limited and that the issues raised at the HEW hearing were much narrower than those raised in the Federal court lawsuit.

HEW presented its case at the hearing before a Federal hearing examiner. Its presentation of the issue relating to 402(a)(23) took approximately 5 minutes. Apparently HEW believed that the law violation was so obvious that extensive documentation was not needed.[29] The burden was placed upon the intervening AFDC recipients to establish for the hearing examiner and the public the gravity of California's law violation.[30] After hearing extensive testimony, the hearing was closed. The recommended decision by the hearing examiner was due some time in October 1970, but the final decision would not be issued until the following year.[31]

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[26] The HEW conformity hearing provisions for AFDC are set forth in 42 U.S.C. sec. 604(a) (1964), as amended (Supp. V, 1969). If the Secretary of HEW finds the State out of conformity, he "shall notify such State agency that further payments will not be made to the State (or in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that * * * there is no longer any such failure to comply. Until he is so satisfied, he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)."

In only one instance since 1935 have funds actually been withheld from a State. In Ohio in 1938 a threatened fund cutoff actually did take effect. It lasted 1 month and cost Ohio $1.3 million. The circumstances of the State violation were so gross that Federal administrators were left little choice but to terminate Federal funds. See Altmeyer, The Formative Years of Social Security, (University of Wisconsin 1968), p. 75 et seq.

[27] "Conformity of Public Assistance Plan of the State of California with the Social Security Act: Notice of Hearing," 35 Fed. Reg. 11150 (July 10, 1970).

[28] *Bryant*, Motion to Stay Federal Court Proceedings, filed Aug. 27, 1970.

[29] See "Recommended Findings and Proposed Decision," in re California conformity hearing, Oct. 6, 1970, p. 4:

"Counsel for the Federal administrator introduced only documentary proof at the hearing on the issue of adjustment of the 'maximums.' No witnesses were used and no attempt was made to examine either State welfare practices or State standards of need."

[30] Ibid., p. 5:

"Testimony and oral statements from intervening parties [i.e., California Welfare Rights Organization] demonstrated that public assistance payments by California had not kept pace with rising costs of living. Malnutrition among children was identified as one of the major problems created by these inflationary trends. The problem has grown increasingly acute during the past 3 years. Objections were raised [by the State] that this testimony broadened the issues beyond the scope of the notice. Technically, such evidence may have been superfluous; but it lent an aura of credibility to the brief documentary presentation by the Government."

[31] "Decision of the Administrator," in re California conformity hearing, Jan. 8, 1971.

Shortly after the close of the August HEW hearing, the recipients' claims were heard in Federal district court. On September 11, 1970, an order issued from the Federal district court which required an immediate increase in the maximum grants to conform to Federal law and which provided California with 60 days to meet Federal requirements through any system consistent with Federal law.[32]

Evidence was submitted in the Federal court suit to demonstrate the clear law violation by California. Included in the evidence was the affidavit of the former high-ranking California Department of Social Welfare official discussed *supra* and also an official memorandum of the California department which documented its clear understanding of its obligation under 402(a) (23).[33]

Based upon this evidence the Federal district court made the following observation:

> In the instant case there is "no genuine issue as to any material fact" on the issue whether the State of California has failed to increase its standard of need as of July 1, 1969, or adjust in dollar "maximums" which were established in 1957, or to adopt a system of "ratable reduction" based upon such need.
>
> The failure of the State to comply with Federal law, having persisted for more than 1 year, can no longer be ignored. Regardless of the "practical and political consequences" involved in State adherence to the provisions of section 402(a) (23) the State cannot continue to frustrate the will of Congress without incurring the risk of an injunction against the payment of Federal moneys to the State.[34]

Following the September 16, 1970, district court order, the HEW hearing examiner issued his proposed decision finding California to be in violation of section 402(a)(23) and further finding, as did the Federal judge, that as a result of the violation there was widespread malnutrition and suffering on the part of AFDC children.[35]

Despite the findings of the Federal district court and the HEW hearing examiner, California continued its policy of failing to increase grants. Instead, on November 24, 1970, California submitted to the Federal district court a proposal to increase the maximums on paper but to reduce the actual payments to a level of 69 percent of the State-determined need standard.[36] Although the recipients pointed out that the attempt to reduce grants to the 69-percent level was in clear violation of State law, the California Department of Social Welfare Director persisted in submitting his proposals. The State also appealed the decision of the Federal district court which ordered immediate grant increases, and in early December 1970, the Ninth Circuit Court of Appeals issued a stay of the Federal district court's order.

Following the proposed reduction in welfare grants to the 69-percent level, the recipients were forced again to seek relief in the courts. An action was commenced in State superior court in Sacramento which led to an injunction against any reduction in AFDC grants to the

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[32] *Bryant*, partial summary judgment, filed Sept. 11, 1970.

[33] Memorandum from Arlo Dehnert, Chief of the AFDC Bureau, State Department of Social Welfare, to several key Department staff people, entitled "*Ivy* and *Bryant* cases: AFDC Bureau Assignment and Work Plan Summary," Dec. 17, 1969. The memo states: "This approach will not fully satisfy *Bryant* (that is, it will not meet SSA sec. 402(a) (23) since we must also make proportionate adjustment in MPB [maximum grant])." Memorandum, p. 2.

[34] *Bryant*, memorandum opinion, filed Sept. 16, 1970.

[35] See n. 30, supra.

[36] See *Bryant* v. *Carleson*, 444 F. 2d 353 at 356 (9th Cir., 1971), and *California Welfare Rights Organization* v. *Carleson*, 4 Cal. 3d at 450, 93 California Reporter 758 p. 761 (1971).

69-percent level.[37] Simultaneous to the issuance of the injunction in Sacramento, a conflicting court order was issued in Los Angeles enjoining any increases in the maximum grants.[38] The question of California's authority to increase the maximum grants and its authority to adopt a percentage grant reduction to 69 percent of the need standard rapidly reached the California Supreme Court.

While the case was pending before the California Supreme Court, HEW issued its decision finding California in violation of 402(a)(23) and ordering a termination of Federal funds to California effective April 1, 1971.[39] The decision was issued on January 8, 1971. Within hours after the issuance of the decision there were a series of communications between Governor Reagan, Vice President Agnew, and HEW Secretary Richardson, all of which flowed from an earlier meeting between Governor Reagan and President Nixon in San Clemente on welfare policies. The next day HEW withdrew its decision to terminate Federal funds.[40]

On March 25, 1971, the California Supreme Court ruled on the claims of the welfare recipients. In a unanimous decision the supreme court sustained the position of the recipients and found that the California Department of Social Welfare did have the authority to increase the maximum grants to conform to Federal law, but had no authority to adopt a 69-percent ratable reduction system. In its decision the court recognized the clear and continued violation of Federal law by the State of California.[41]

During the time the California Supreme Court was considering the case, the aggrieved recipients continued to press HEW to reissue its nonconformity decision. Finally the recipients sued to force HEW to act.[42] One week later, after the California Supreme Court removed any doubt about California's ability to comply with 402(a)(23), HEW

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[37] *California Welfare Rights Organization* v. *Martin*, Sacramento Superior Court, No. 207231, filed Nov. 19, 1970.

[38] *Levine* v. *Martin*, Los Angeles Superior Court, No. NWC-21865, filed Dec. 21, 1970.

[39] See n. 31, *supra*.

[40] See "$700 Million Welfare Aid Is Restored," San Francisco Chronicle, Jan. 9, 1971. The article states:

"The Governor told reporters * * * that when he learned of HEW's threat he telephoned Vice President Spiro Agnew late Thursday and told him there had been a misunderstanding. 'He called me back and told me that (HEW) Secretary Elliot Richardson would be calling me * * *.'

"Reagan said he told Richardson it was misunderstanding and the Secretary 'called off the press conference (announcing the cut) and ordered them not to take the action.' "

[41] *California Welfare Rights Organization* v. *Carleson*, 4 Cal. 3d 445, 93 California Reporter 758, 482 P. 2d 670 (1971). Shortly after the court's decision, the following article appeared (San Francisco Chronicle, Apr. 2, 1971.):

"Reagan in No Hurry on Child Aid

"Gov. Ronald Reagan made clear yesterday that his administration is in no hurry to have the State conform either with Federal regulations or a recent court decision on the Aid to Families With Dependent Children program. 'There is no great and immediate problem on this,' the Governor told reporters at his news conference.

"Asked about 'deadline' of today, supposedly set by the U.S. Department of Health, Education, and Welfare, Reagan said only that 'they just wanted * * * the knowledge that we are proceeding.' " (Ellipsis in original.)

" 'We are talking to each other,' he said."

[42] *California Welfare Rights Organization* v. *Reagan*, No. C-71676-ACW (N.D. Cal., filed Apr. 8, 1971).

reissued its decision and order to terminate Federal funds. Faced with the imminent termination of Federal funds, the California Department of Social Welfare raised the grants effective June 1, 1971, 23 months after Congress had mandated the increases and almost a year after HEW had notified California that a conformity hearing would be held.[43]

The most significant commentary on California's long-term failure to comply with 402(a)(23) was provided by the Federal court in April 1971:

> Between July 1, 1969, and today, the State of California has been told indirectly by the United States Supreme Court in *Rosado*, and directly by this court, the California Supreme Court, the Superior Court of Sacramento County and the Department of Health, Education, and Welfare that it is not in compliance with Federal law. It has been ordered by several of these tribunals to comply *forthwith* with Federal law. Yet, in what can only be described as a flagrant disregard of the authority of these bodies, indeed of the authority of the U.S. Congress whose statutes are involved, the State has refused to take any meaningful corrective action, while at the same time it continues to accept Federal moneys. The court has at all times acted on the assumption that the State was proceeding in good faith, but this assumption becomes increasingly strained as weeks become months and months become years without a single welfare recipient receiving grants calculated in accordance with Federal law.[44]

Another example of California's failure to comply with Federal law involved an important 1967 work incentive amendment to the Social Security Act.[45] In *Nesbitt* v. *Montgomery*,[46] the California Department of Social Welfare was found to be acting in direct violation of the congressional statute and on implementing HEW regulations which exempted a portion of an AFDC recipient's earnings from consideration as income.[47] As a result, some 28,000 families in California were illegally deprived of an average of $28 per month in welfare pay-

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[43] It should be noted parenthetically that had HEW's decision to terminate funds which it had issued on January 8, 1971, remained in effect, grants would have been raised in California no later than April 1, 1971, and in all probability on March 1, 1971. This vacillation by HEW contributed in no small part to the further delay in the benefits to which recipients were legally entitled.

[44] *Bryant*, Memorandum, Opinion and Order, filed Apr. 19, 1971.

[45] 81 Stat. 881 (1968), 42 United States Code § 602(a)(8)(A)(ii). The Senate Finance Committee commented on this statute:

"A key element in any program for work and training for assistance recipients is an incentive for people to take employment. If all the earnings of a needy person are deducted from his assistance payment, he has no gain for his effort. * * * There is little doubt, in the opinion of the committee, that the number of recipients who seek and obtain employment will be greatly increased if, in conjunction with the work incentive program, there may be added to title IV some specific earnings incentives for adults to work." Senate Report (Finance Committee) No. 744, Nov. 14, 1967, To Accompany H.R. 12080. 1967 U.S. Code Congressional and Administrative News, at 2994.

[46] Sacramento Superior Court No. 193675 (Memorandum Decision entered Oct. 1, 1969). CCH Poverty Law Reporter § 10,645, p. 11,513 (hereinafter referred to as *Nesbitt*).

[47] The HEW regulations were issued on Jan. 29, 1969, in the Federal Register, effective on publication. 34 Fed. Reg. 1394 at 1396. They were later recodified at 45 C.F.R. 233.20(a)(7): see also, 45 C.F.R. 233.20(a)(11)(ii). The Secretary of HEW summarized the Federal regulations' requirement as follows:

"The method for disregard of earned income has been modified. In arriving at the amount of earned income to be applied against the assistance budget the amount to be disregarded is to be deducted from gross income rather than from net income. Next, the amount allowed for work expenses is to be deducted. The remaining amount is then applied against the assistance budget (§ 233.20(a)(7))." 33 Fed. Reg. p. 1394 (Jan. 29, 1969).

ments for at least 14 months.[48] An invalid State regulation required that the Federal earnings exemption be applied against a recipient's net rather than gross earnings. Not only were recipients deprived of benefits to which they were legally entitled under Federal law, but one of the major goals of the Federal work incentive amendment—encouraging recipients to work—was compromised by the Department's invalid rule.[49]

During the litigation, California conceded that its regulation was in conflict with the HEW regulation,[50] but it argued that no judicial redress was available to the recipient plaintiffs. The court held to the contrary and enjoined the further application of the invalid regulation. Its decision was not appealed by the State.

On November 17, 1969, the court entered judgment in the *Nesbitt* case enjoining forthwith the further application of the State welfare regulation and declaring that the gross rather than net income method of computing earnings exemptions should have been applied since at least January 29, 1969 (the effective date of the Federal regulation). Although the California Department of Social Welfare issued an emergency regulation shortly after the court decision, the new regulation was not, by its terms, to replace the invalid regulation for some months.[51]

Contempt proceedings were instituted, and after a hearing the court issued an order directing immediate repeal of the newly adopted regulations.[52] Of significance in terms of the State pattern of law violation was the finding made by the court after the contempt hearing:

> [T]he former respondent * * * as Director of Social Welfare, and the former respondent * * *, as Acting Director of Social Welfare, together with their counsel, engaged in a course of conduct designed to impede the enforcement of this Court's judgment of November 17, 1969. The Court finds further, that since * * * has left the jurisdiction and since * * * no longer acts as director, it is not expedient or necessary to proceed against them for their personal derelictions in regard to the judgment of November 17, 1969. The Court finds further that the present respondent * * * as Director of Social Welfare, is continuing the conduct of his two predecessors in violation of the judgment.[53]

2. Cases involving the procedural rights of welfare recipients.—As with the cases affecting grant levels, the cases dealing with the proce-

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[48] *Nesbitt*, Memorandum of Decision and Order for Judgment, at 16. In fact, the California Department of Social Welfare did not authorize retroactive payments until March 1970, 5 months after the court decision. Cf. SDSW Circular Letter No. 2432, March 25, 1970, amplifying the Department's telegram to county welfare directors of March 17, 1970.

[49] Welf. & Inst. Code § 11205, provides in relevant part:

"It is the intent of the legislature that the employment and self-maintenance of parents of needy children be encouraged to the maximum extent and that this chapter shall be administered in such a way that needy children and their parents will be encouraged and inspired to assist in their own maintenance. The (California) department (of social welfare) shall take all steps necessary to implement this section."

[50] *Nesbitt*, Memorandum of Decision and Order for Judgment, at 5.

[51] See State Department of Social Welfare Manual Letter No. 19, December 19, 1969, which amended regulations to comply with *Nesbitt's* prospective relief. Not only were the emergency regulations not to become operative until February 1, 1970, but they were conceded to be in violation of the court's judgment of November 17, 1969, in other areas.

[52] Peremptory Writ of Mandate filed and entered Jan. 13, 1970.

[53] Minute Order dated Jan. 13, 1970.

dural rights of recipients under Federal law must briefly be set in context. Pursuant to the Social Security Act, all recipients are entitled to request and have an administrative fair hearing on questions regarding their eligibility, their level of grant, or the timeliness of aid provided.[54] It has been in this area of fair hearings that California has failed to meet minimum requirements set down by HEW.

In *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011 (1970) and *Wheeler* v. *Montgomery*, 397 U.S. 280, 90 S. Ct. 1026 (1970), the United States Supreme Court found that due process required that a welfare recipient be afforded an opportunity for an evidentiary hearing prior to the termination of welfare benefits.[55] The Supreme Court also required adequate and detailed notice prior to termination or suspension of benefits for every welfare recipient.[56] Pursuant to these court decisions, HEW issued specific regulations requiring detailed advance notice of termination or reduction at least 15 days prior to the agency action and an opportunity for aid to be continued pending a fair hearing decision.[57]

Despite the fact that California was a party to the *Wheeler* case and was clearly on notice of the requirements of Federal law, it took several months before California adopted regulations complying with the Federal requirements.[58] Although the adoption of the regulations brought California into paper conformity, the California Department of Social Welfare continued to violate the Federal regulations in practice.[59]

After the California Welfare Reform Act of 1971 was enacted,[60] the State Welfare Director directed all of the counties to provide recipients with a cursory notice which seriously departed from the requirements of Federal law.[61] As a result of the Director's action, thousands of recipients were improperly terminated from aid. The failure of the Director to adhere to Federal requirements not only resulted in severe injury to recipients but also cancelled the first month

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[54] 42 U.S.C. § 302(a)(4)—(OAS); 42 U.S.C. § 602(a)(4)—(AFDC); 42 U.S.C. § 1202(a)(4)—(AB); 42 U.S.C. § 1352(a)(4)—(ATD).

[55] See *Goldberg* v. *Kelly*, 397 U.S. 254 at 264, 90 S. Ct. 1011 at 1018 (1970) (hereinafter referred to as *Goldberg*), and *Wheeler* v. *Montgomery*, 397 U.S. 280 at 282, 90 S. Ct. 1026 at 1027 (1970) (hereinafter referred to as *Wheeler*). The court recognized that the termination of aid to a welfare family may deny the essentials of life to that family and that therefore welfare must be administered in a manner to guard against administrative error which might unjustly deprive the family of the basic essentials of life. Furthermore, the court noted that a family with a great need to concentrate upon finding the means for daily subsistence would not be able adequately to seek redress from the welfare bureaucracy.

[56] See *Goldberg*, 397 U.S. 254 at 267, 90 S. Ct. 1011, 1020 (1970).

[57] 45 C.F.R 205.10(a)(5), published in 36 Fed. Reg. 3034 (Feb. 13, 1971).

[58] The Federal regulations became effective on Apr. 14, 1971. California adopted its regulations on Sept. 3, 1971. See California Department of Social Welfare, "Manual of Policies and Procedures," sec. 22–000 et seq.

[59] HEW failed to act against California's delay in implementing the Federal regulations. Moreover, it appears to be HEW's position that it will not look beyond paper or plan conformity; that is, it will not examine the practices to see if they conform to the regulations adopted by the State. (See National Journal Welfare Report, pp. 405 and 407.)

[60] The Welfare Report Act of 1971, Cal. Stats. 1971, ch. 578, was placed into effect on Oct. 1, 1971 as an emergency measure.

[61] See note 57, supra.

and a half of projected savings from California's Welfare Reform Act.[62]

The Joint Senate-Assembly Subcommittee, recognizing the seriousness of this law violation and its impact on recipients and taxpayers alike, spent considerable time detailing the history and extent of this violation of Federal welfare requirements. The Subcommittee's summary [63] of the events surrounding this law violation warrants extensive quotation here:

The Welfare Reform Act of 1971 was signed by the Governor on August 13, 1971. Its major provisions were to be operative on October 1, 1971.

As a means of implementing the act, the State Department of Social Welfare sent a telegram to each county welfare director, dated September 2, 1971. The telegram suggested that the following very generalized notice be sent to welfare recipients:

NOTICE OF POSSIBLE CHANGE OR DISCONTINUANCE OF YOUR GRANT

Under provisions of the Welfare Reform Act of 1971, your grant beginning October 1, 1971, may be changed, or you may no longer be eligible for a welfare grant. One or more of the following changes in the law may affect you.

The notice then proceeded to list, in general terms, a number of major elements of the Welfare Reform Act.

This "suggested notice" would appear, on its face, to be in clear violation of the requirement that recipients be notified with specificity as to the reasons for a reduction or termination in welfare benefits.

The legal staff of the State department of social welfare must have been aware of this critical defect in its suggested notice to recipients: On September 3—only 1 day after the telegram including the suggested notice was sent to each county welfare director—the State department of social welfare filed regulations with the secretary of state which dealt in detail with the kind of notice which must be sent to welfare recipients before a reduction or termination in benefits could be properly instituted. Those regulations, prepared over many months before being filed with the secretary of state, clearly indicate that the recipient must be notified, with particularity, as to exactly how and why a change in law or regulations will affect him.[64]

Thus, the suggested notice included in the SDSW telegram of September 2 was not only suspect on its face, *it failed to conform with the regulations which the department itself filed the very next day with the secretary of state.*

According to sworn testimony before the Senate-Assembly Subcommittee on Welfare Reform, this critical inconsistency was raised with the State department of social welfare at a meeting in Sacramento on September 24. Mr. ———, complaint and appeals coordinator for the Contra Costa County Social Services Department, testified that at a meeting of the 24th, he expressed his view that the suggested notice failed to meet the requirements of particularity

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[62] California Senate-Assembly Subcommittee on Implementation of Welfare Reform: Report to the Legislature, Mar. 17, 1972, p. 26:

"To date, 49 of California's 58 counties have program and administrative costs in excess of $2.6 million as the result of this specific illegal action on the part of the State Department of Social Welfare. And this $2.6 million figure does not include the full costs incurred in Los Angeles, San Francisco and Alameda Counties. Nor does it include the multi-million dollar costs which will result from a new court order directed against the State welfare department's permitting the continued use of illegal notices by some county welfare departments. The responsibility for the inadequate and illegal notice which has proved so damaging to welfare recipients and so costly to State and local taxpayers must squarely rest with the State welfare administration and specifically with the Office of the Director of Social Welfare."

[63] California Senate-Assembly Subcommittee on Implementation of Welfare Reform: Report to the Legislature, Mar. 17, 1972, pp. 26–34.

[64] See California Department of Social Welfare "Manual of Policies and Procedures," sec. 22–022. (Footnote added by author.)

as set forth in the Department's regulations of September 3. Mr. ———, who was then SDSW's chief referee in charge of fair hearings, and who wrote major portions of the regulations filed with Secretary of state on September 3, agreed with Mr. ——— that the suggested notice in the September 2 SDSW telegram was contrary to the Department's own regulations. Mr. ——— has since been relieved of his duties as chief referee.

Both Mr. ——— and Mr. ——— testified that they confronted Mr. ———, Deputy Director in charge of Legal Affairs, with their concern regarding the adequacy and legality of the suggested notice. According to the testimony, [the Deputy Director] insisted that the notice suggested in the September 2 telegram would meet the requirements of the law.

[The Deputy Director's] legal opinion was in error. On October 29, 1971, the three-judge Federal panel ruled unanimously that SDSW's suggested notice to recipients—used virtually verbatim by Contra Costa County and most of California's 58 counties—was, indeed, defective and in violation of the law.[65]

"Each of the foregoing defects * * * [in the] notice is a serious departure from the requirements of due process. None of the deficiencies can be justified by any showing of countervailing governmental interests. The need to effect changes in the grants of a large number of recipients is no justification for the failure to supply meaningful and accurate information to the individual directly affected. Contra Costa did not afford the notice required by due process before a termination, reduction or suspension could be effected, and it did not afford a notice which was in 'full and strict' compliance with the regulations as enjoined by the temporary restraining order previously entered. Consequently, Contra Costa was under an obligation to issue supplementary warrants not later than October 8; this it failed to do, because of the influence exercised by defendant [Director] and those acting under his direction in the State department of social welfare." [66]

The "influence" exercised by [the Director of the California Department of Social Welfare] came in the form of a threat to "claim cut" counties which sought to comply with the prevailing court order concerning notification of recipients. In other words, SDSW might refuse to reimburse those counties for the State share of the costs of abiding by the court order.

Because of the defective and illegal notice to recipients, California's 58 counties have been under court order to reinstate any reductions or terminations in benefits under the Welfare Reform Act where there has not been proper notice to the recipient. The resultant cost to the taxpayers has been heavy. Of the State's 58 counties, 49 reporting to date have indicated that court-ordered supplemental grants—reinstating reductions or terminations which were void because of the illegal notice—have cost a total of $2.1 million. Administrative costs associated with remedying the defective notice have totaled $465,651.70.

*   *   *   *   *   *   *

Indeed, on February 24, 1972, in response to SDSW lawlessness, the three-judge Federal court issued a second order which is certain to cost California taxpayers at least $10 million more in unnecessary welfare costs.[67]

On a motion to hold Director ——— in contempt, the Federal court found that Director ——— failed to obey the previous court order of October 29, 1971, and that he permitted Los Angeles and San Francisco Counties—comprising nearly 50 percent of the State's total welfare population—to continue to employ defective notification procedures.

This means that over the last 5 months any potential welfare savings in those counties has been lost. All persons whose grants were reduced or terminated as a result of the Welfare Reform Act will be restored to their previous position, since cuts can only be pursuant to proper notice.

When the final results are in, the total cost of failing to provide legal notice to welfare recipients may run as high as $25 million.

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[65] *Wheeler* v. *Montgomery* and *Palladino* v. *Carleson* (consolidated cases), No. 48303 (N.D. Cal.) (hereinafter referred to as *Wheeler II*). Memorandum opinion and order granting preliminary injunction, filed Oct. 29. 1971, pp. 8–9. (Footnote added.)

[66] *Wheeler II*, Memorandum opinion and order granting preliminary injunction. filed Oct. 29. 1971, pp. 8–9. (Footnote added.)

[67] *Wheeler II*, Order, filed Feb. 24, 1971. (Footnote added, emphasis in original.)

The Federal court was unequivocal in placing the responsibility for any such costs directly with the State department of social welfare, and specifically with its director * * *:

"In spite of defendant [Director's] remonstrances that he does not have the power effectively to coerce compliance with his directions and orders, the records in this case are replete with proof that he does. Moreover, there is not the faintest suggestion in those records that any county agency has ever returned to comply voluntarily in the past, or would ever refuse to comply voluntarily in the future, with an instrument from defendant * * *. *The court finds that the responsibility to insure uniform compliance with the requirements of due process, State law, agency regulations, and the orders of this court based thereon, belongs solely and exclusively to defendant * * * in his capacity as Director of the State Department of Social Welfare.*

"In short, the responsibility for insuring the adequacy of those notices, and all other notices of proposed terminations, reductions, or suspensions issued by the county welfare agencies, is committed by statute to defendant * * *, and defendant * * * may not, as he has tried to do in these proceedings, seek to displace that responsibility onto the counties or this court. *The court finds that defendant * * * has not discharged his responsibility to insure uniform compliance with the requirements of due process embodied in the regulations adopted by the State department of social welfare and approved by this court.*" [68]

HEW also required the States, effective February 8, 1968, to render fair hearing decisions and take proper administrative action within 60 days from the date of request for a fair hearing.[69] The reasons for prompt hearing decisions are manifest. To cite one obvious example, consider the injury which befalls an erroneously denied applicant for aid to the totally disabled who is ill and waiting for a decision on his appeal.

Notwithstanding the clear requirement of Federal law, the California Department of Social Welfare rendered fair hearing decisions on the average 6 months after the request for a fair hearing. In many instances the hearings were not decided for a year or two.[70]

The department attempted to place the burden for noncompliance on the failure of the legislature to provide sufficient funding. However, the department itself never implemented a plan which would have caused the hiring of additional referees to conduct fair hearings and make proposed decisions.[71] Although some of the blame can be placed upon the legislature, the department's failure to bring to the atten-

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[68] Ibid., at 2–4. (Emphasis in original.)

[69] HEW Handbook of Public Assistance Administration, secs. 6200(j) and 6400(g). These regulations were recodified in 45 CFR 205.10(a)(11), published in 36 F.R. 3034 (Feb. 13, 1971) and effective Apr. 14, 1971.

[70] On July 1, 1968, there were 2,487 appeals pending from the previous fiscal year, 1967–68. On July 1, 1969, there were 3,574 appeals pending from the previous fiscal year, 1968–69. On July 1, 1970, there were 15,601 appeals pending from the previous fiscal year, 1969–70. To illustrate the magnitude of the problem, SDSW closed 11,267 appeals during fiscal year 1969–70, 9,542 appeals during fiscal year 1968–69, and 5,915 appeals during fiscal year 1967–68. Thus it can be seen that the backlog of undecided appeals was growing geometrically. See California Department of Social Welfare Management Information Systems, Annual Statistical Report, series AR 1–12, "Public Welfare in California 1969–70," table 57, and series AR 1–13, "Public Welfare in California 1970–71," table 43.

[71] Conversation with a former high California Department of Social Welfare official. Traditionally only social workers with MSW degrees and extensive experience with public assistance were hired as referees. Top department administration decided to experiment with two plans, one to raise job specifications and request additional funding to hire legal personnel, the other to lower job specifications and salaries slightly to hire social workers with extensive experience with public assistance but without MSW degrees. The department later reversed itself and never tested the second plan.

tion of the legislature the clear mandate of Federal law must be considered.

After attempting through various forums to resolve the issue short of litigation, welfare recipients commenced suit against the Director of the Department to require that decisions be rendered within the 60-day period.[72] Although the Director adopted regulations which required the hearing decisions to be rendered within the 60-day period,[73] he argued that he should be excused from compliance because he had insufficient funds to employ adequate staff. This argument was rejected in this case as it was in each of the other cases where it was raised.[74]

The final case to be discussed, *Diaz* v. *Quitoriano*,[75] illustrates another serious Federal conformity problem. In this case a rural California county refused to advise recipients of their right to an administrative fair hearing.[76] Without recipient knowledge of the existence of the right to have a fair hearing, the federally mandated hearing remedy was rendered meaningless. The fair hearing remedy was especially important in this county because, according to a General Accounting Office report, the county welfare department repeatedly violated accepted administrative practices.[77]

Although both HEW and the California Department of Social Welfare were aware of the county's law violation no administrative action was instituted to bring the county into compliance. It should be noted that the California Department of Social Welfare had authority to institute conformity proceedings against the county by utilizing a procedure similar to the remedy available to HEW.[78] Again it took an order from a court in an action commenced by welfare recipients to compel the county to comply with the Federal fair hearing requirements.

II. Some Explanations for the Pattern of Law Violation in California

Before setting forth recommendations for meeting the conformity problem, the following explanations for the pattern of law violation in California are offered for consideration:

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[72] *King* v. *Martin*, Alameda County Superior Court, No. 398769, filed March 25, 1970 (hereinafter referred to as *King*).

[73] California Department of Social Welfare, "Manual of Policies and Procedures," section 22056, effective Sept. 3, 1971, see n. 69, supra and p. 15, supra.

[74] See *Nesbitt*, n. 46, supra. The Director's argument that he need not comply was rejected in *King*, 21 Cal. App. 3d 791, at 796, 98 Cal. Rptr. 711, at 715 (Dec. 3, 1971) : "Respondent contends that his failure to render timely fair hearing decisions is not arbitrary or discriminatory, but should be excused by his present lack of funds to employ sufficient staff. It is true that fiscal difficulty has sometimes been held to excuse nonperformance of official duty . . . We have concluded that the [California] Supreme Court did not intend by its language in *Sutro Heights Land Co.* to establish a generally applicable excuse from the performance of mandatory official duty wherever fiscal difficulty is shown."

[75] 268 Cal. App. 2d 807, 74 Cal. Rptr. 358 (1969) (hereinafter referred to as *Diaz*).

[76] HEW Handbook of Public Assistance Administration, section 6200(f), effective February 8, 1968, and 45 C.F.R. section 205.10(a)(2), published in 36 Fed. Reg. 3034 (Feb. 13, 1971), effective April 14, 1971.

[77] A description of the law violations which occurred in Sutter County and the resulting GAO report is contained in "The Welfare System and the Farm Laborer," University of California 1970, Davis Law Review, vol. 2, pp. 194–197.

[78] Cal. Welf. & Inst. Code section 10605. See n. 26, supra.

1. HEW inadequately enforces Federal requirements due to (*a*) cumbersome and unrealistic remedies for achieving conformity,[79] (*b*) political pressures, (*c*) considerations of federalism, and (*d*) insufficient manpower.[80]

a. HEW's main tools for achieving conformity are informal negotiations and communications between State and regional HEW officials.[81] A conformity hearing is called only as a last resort. If the Secretary of HEW finds nonconformity, he must terminate funds either for the State's entire program or for that portion of the program authorized by the statute with which the State is not complying.[82] The State may seek judicial review of the Secretary's decision in the U.S. Court of Appeals.[83] Even HEW has acknowledged the inadequacy of the conformity hearing remedy.[84] As will be discussed infra, the version of H.R. 1 which passed the House of Representatives in June 1971, recommended that HEW be provided with a greater range of remedies and sanctions to effect compliance with Federal law.[85] These provisions were not included in the version which was finally enacted into law in October 1972.

b. The influence of political considerations on the enforcement process was well summarized by a high-ranking California Department of Social Welfare official in an affidavit explaining why California had failed to meet the requirements of section 402(a)(23) of the Social Security Act:

> In my opinion, the failure to comply with federal law can be explained at least in part by the Department's assumption that they would not be called to account for their failure to follow federal law and that there would be no day of reckoning since the Republican Administration in Washington would not jeopardize the position of a Republican Administration in California.[86]

c. The delicate relationship between the Federal Government and the sovereign States offers some explanation for HEW's disinclination to move on conformity issues. For example, during the section 402(a)(23) controversy in California and in response to HEW's effort to secure compliance, Governor Reagan maintained that "the State is in the best position to know how to meet the needs of welfare recipients." [87]

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[79] For a full discussion of HEW conformity tools and methods of operation, see "Administrative Conference Report," particularly appendix B to the report.

[80] HEW's shortage of full-time staff assigned to enforce compliance is well known. See National Journal Welfare Report, pp. 401 and 407.

[81] See, 45 C.F.R. sections 201.5(c), 201.6 (1970); see also, U.S. Advisory Commission on Intergovernmental Relations, "Statutory and Administrative Controls Associated With Federal Grants for Public Assistance", pp. 62–67 (1964).

[82] 42 U.S.C. sec. 604(a).

[83] 42 U.S.C. sec. 1316(a)(3).

[84] "HEW's monitoring of state welfare programs traditionally has been modest, principally because the only administrative remedy at the department's disposal—cutting off funds—was regarded as too severe a penalty." National Journal Welfare Report, at 404. See SRS Administrator Twiname's similar comments on this matter, ibid. p. 407.

[85] Report of the Committee on Ways and Means on H.R. 1, Social Security Amendments of 1971, House Report No. 92–231, May 26, 1971, p. 36.

[86] See n. 22, supra, at C.T. 415 [17–22]. See also, "Comment, Intervention in HEW Welfare Conformity Proceedings," 6 Harvard Civil Rights-Civil Liberties Law Review, pp. 559, 571–74 (May 1971).

[87] "State Accused of Welfare Violations," San Francisco Chronicle, July 10, 1970. The article adds: "Although changes in procedure have been required by law as a condition for receiving Federal matching money, (the Governor) insisted it is 'inconceivable that Federal bureaucrats even consider overruling the State.' "

2. There are no incentives for the State to comply with Federal law. In fact, disincentives exist.

The longer a State delays in achieving compliance with Federal requirements having fiscal impact, the greater the State's dollar savings. For example, unless retroactive payments are required by a court, relief will be granted only from the date of a court order or finding of conformity which might be several months or years after a requirement should have been implemented.[88] Because of the large sums involved, some courts have been reluctant to order welfare administrators to take effective action or to order retroactive payments.[89]

HEW regulations authorize Federal matching funds for retroactive payments made pursuant to court order or fair hearing decision.[90] However, HEW takes the position that it has no authority to require retroactive payments by the States without enabling legislation from Congress. And even if retroactive payments are awarded, the State saves considerable sums due to the loss of many recipients who cannot be located or who are no longer receiving aid.

3. It is generally recognized that there is considerable public antipathy toward welfare recipients, especially AFDC families. This antipathy is politically translated into program under-funding, bureaucratic inertia, and restrictive eligibility rules.

4. There is a lack of a well-organized and effective welfare constituency. Although the welfare rights organizations in California have had some major accomplishments, most notably involving section 402(a)(23), they have limited financial and political resources. Relative to the impact of constituencies of other Federal and State agencies, the welfare rights organizations' impact must be considered limited.

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[88] For a general discussion of retroactivity, see, Levy, "The Aftermath of Victory: The Availability of Retroactive Welfare Benefits Illegally Denied," 3 Clearinghouse Review 254 and 285 and 330 (1970), and 4 Clearinghouse Review 6 (1970). See also, "Welfare Cases Which Have Considered the Issue of Retroactive Benefits as of July 1971," prepared by the Center on Social Welfare Policy and Law.

[89] In *Bryant* v. *Carleson*, 444 F.2d 353 (9th Cir., 1971), California had appealed the order of the Federal district court which required an increase in the maximum grants effective October 1, 1970. Welfare recipients simultaneously were claiming that the Federal district court should order the State to pay retroactively to July 1, 1969. With respect to the Federal district court's interim order granting increases effective October 1, 1970, the Ninth Circuit Court of Appeals ruled that the Federal district court had erred. The Court of Appeals cited fiscal consideration as in part explaining its decision. *Bryant* v. *Carleson*, at 361. The recipients' request for retroactive payments, which would have amounted to some $50 or $60 million, was rejected by the Federal district court after the case was remanded to it. Although the court again recognized California's clear, intentional violation of Federal law, it felt that the financial burden on the state would be too great and might push California to the brink of bankruptcy. *Bryant*, N.D. Cal., ruling from the Bench without an opinion, R.T. July 29, 1971, 21–24.

[90] See Memorandum to State Agencies Administering Approved Public Assistance Plans, Subject: Retroactive Payments—Federal Financial Participation from John D. Twiname, Administrator, Social and Rehabilitation Service, HEW, March 5, 1970.

III. Recommendations

Based upon the experience in California as well as the similar failures of many other States throughout the country to comply with important requirements of Federal law,[91] it is apparent that legislative innovation is necessary.

A number of recommendations will be offered for consideration, premised on the continuation of the existing public assistance system. The premise appears to be the present reality for the AFDC program.[92] Before discussing those recommendations, two suggestions premised on the replacement of the existing system will be briefly mentioned.

A. *Replacement of the Existing System*

1. Simplify eligibility requirements and delimit responsibility to reduce discretion.—There is little doubt that if a less complex system of income maintenance were established, many conformity problems would be eliminated. By reducing the welter of rules and regulations to be followed in determining eligibility or grant levels, much of the existing discretionary power could be reduced. The system could then be automated with concomitant cuts in administrative costs. This is one of the positive features of a negative income tax system.

2. Federalize the program and provide direct administrative responsibility.—Having the welfare program administered by IRS or the Social Security Administration or another Federal agency would have obvious benefits. For one, the several tiers of government—Federal, State, and county—could be eliminated and administrative responsibility would be centralized. It has been reported that the Social Security Administration, operating under relatively simple, automatic rules and regulations, is able to keep its total administrative costs to about 2 percent of benefits paid.[93] Welfare, on the other hand, has total administrative claim costs, excluding social services, of over 10 percent.[94]

Although the recent amendment to the Social Security Act based on the final amended version of H.R. 1 contains a simplified eligibility Federal system for the adult programs, the complex grant and eligibility structure at the State level for families with children still remains.[95] Even so, the State option for Federal administration of State supplemental programs for adults is certainly a step in the right direction. A strong incentive for Federal administration contained in the statute is the provision which obliges the Federal Government to pay the entire administrative cost if the Federal agency administers

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[91] See n. 6, supra.

[92] The recent amendment to the Social Security Act, Public Law 92–603, 86 Stat. 1329 (1972), left the basic AFDC grant-in-aid program relatively unchanged.

[93] Assembly Office of Research, California Welfare: A Legislative Program for Reform. California Legislature, Sacramento, February 1969, p. 47.

[94] Ibid., p. 47.

[95] The statute, Public Law 92–603, sec. 301, 86 Stat. 1465 (1972), provides that the Social Security Administration will administer the supplemental security income for the aged, blind, and disabled programs after Jan. 1, 1974. Sec. 402 provides for transitional arrangements until June 30, 1975. See also, Report of the Committee on Finance, U.S. Senate, to accompany H.R. 1, Social Security Amendments of 1972, Senate Report No. 92–1230, Sept. 26, 1972, pp. 393 and 531.

the State's supplemental payments. If the State chooses to administer its own payments, the State would have to pay all of the costs.[96]

B. Changes Within the Existing System

The suggestions for change which are offered here will minimize noncompliance with Federal law. It may be fiscally impossible, as many State and local welfare administrators have argued, to achieve absolute compliance with Federal law given present funding levels for the AFDC program.

1. Provide HEW with additional remedies for noncompliance.—Although the House Ways and Means Committee version of H.R. 1 provided HEW with authority to require retroactive payments, to commence suit against States to remedy law violations, and to set up specific timetables for compliance, it left the Secretary of HEW with the discretion to employ these remedies as he sees fit.[97] While it may be argued that mandatory imposition of sanctions unwisely limits the flexibility of HEW and inhibits negotiation, certain HEW sanctions should be mandatory:

(*a*) A requirement that retroactive payments be paid for law violations where benefits were illegally denied to recipients. The rationale for such a requirement is summarized by the California Supreme Court:

> [Retroactive payments] subserve a clear public purpose by securing to those entitled to aid the full payment thereof "from the date * * * [they were] first entitled thereto" regardless of errors or delays by local authorities. It was the mandatory duty of the county to furnish aid according to the plan therefor which is laid down by the applicable provisions of the Welfare and Institutions Code [citations omitted]. The bare fact that an applicant has by one means or another managed to ward off starvation pending receipt of the payments to which he was previously entitled provides no sufficient excuse for a county to refuse to make such payments. To hold otherwise would, as suggested by petitioner herein, provide a moneysaving device for the counties at the expense of those of our citizenry least able to bear the burden thereof.[98]

(*b*) The development of specific time limits for the holding of conformity hearings and for the rendering of decisions to avoid undue delay in securing compliance such as that experienced in California during the section 402(a)(23) controversy.

(*c*) A requirement that HEW establish a procedure to allow recipients to raise issues of compliance which will be acted upon by HEW through its hearing procedure or through other complaint procedures.[99] Such a right should be without prejudice to the recipient's right to institute court action to enforce Federal requirements.[100]

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[96] Public Law 92–603, sec. 301, 86 Stat. 1474 (1972).

[97] Report of the Committee on Ways and Means on H.R. 1, Social Security Amendments of 1971, H. Rept. No. 92–231, May 26, 1971, p. 36.

[98] *Board of Social Welfare* v. *Los Angeles County*, 27 Cal. 2d 81, 85–86, 162 P. 2d 630, 633 (1945).

[99] For a discussion of the right of recipients to raise conformity issues, see, Comment, Intervention in HEW Welfare Conformity Proceedings, 6 Harvard Civil Rights-Civil Liberties Law Review, p. 559 (May 1971).

[100] Ibid., p. 580–82; see also *Rosado* v. *Wyman*, 397 U.S. 397 (1970). Statutory protection for the recipients' right to institute court litigation is necessary because courts have held in the past that, if an agency remedy is available, the courts should not act until the agency process is completed. Given the delays in the administrative process, even with mandatory time limits, the recipients' most effective remedy—the courts—should not be foreclosed.

2. Recognize the following welfare recipient rights.—

(*a*) The right to sue to enforce Federal requirements in Federal or State court. This right has been uniformly recognized by the courts. It would be appropriate for Congress, when adopting a comprehensive plan to insure compliance with its requirements, to recognize this basic right.

(*b*) The right to sue to compel HEW to apply the mandatory sanctions set forth above. This right has been recognized by the courts and should also be given recognition in any new congressional legislation.

3. Provide financial incentives to the States to conform to Federal requirements either by reducing Federal matching if plan requirements are not met and/or by increasing Federal support when plan requirements are met.—Such a system would go far in effecting compliance because it would reduce the financial advantages to be gained by the States through noncompliance. This approach or variations of it have been incorporated in a number of proposed or already adopted statutes:

(*a*) As noted above, the recent amendment to the Social Security Act has incorporated the incentive device to achieve Federal administration.[101]

(*b*) The recently adopted "Talmadge Amendment" to the Social Security Act contains a "negative incentive" device. Any State which fails after June 30, 1973, to refer at least 15 percent of the average number of individuals registered during the year to the local employment office as "ready for employment" will be penalized by the subtraction of 1 percentage point from its Federal matching share for AFDC for each percent by which referrals fall below 15 percent.[102]

(*c*) Governor Reagan, in his testimony before the Senate Finance Committee on H.R. 1, proposed fiscal incentives to encourage efficient management and simplified administration.[103]

(*d*) At the State level, recently enacted California welfare legislation provides the counties with increased State matching funds to encourage county enforcement of child support obligations.[104]

(*e*) At the Federal level, financial incentives are provided to encourage the States to exercise greater efforts in combating water pollution and controlling highway advertising. For example, if minimum Federal standards on highway advertising are not enforced, a State can lose 10 percent of its Federal highway aid allotment.[105]

4. Require the States to administer as well as supervise State programs.—At present, California and many other States do not have direct administrative responsibility for their aid programs. Rather, local counties assume that responsibility. As a consequence, uneven

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[101] See recommendations, section A, supra.

[102] "Talmadge Amendments," section 3(a)(8), Public Law 92-223, 92d Cong., 1st Sess., H.R. 10604, Dec. 28, 1971. The statute is reprinted at 40 United States Law Week 41, Jan. 25, 1972.

[103] Addendum No. 1 to Testimony of Governor Reagan before Senate Finance Committee (Feb. 1, 1972), p. 9.

[104] See discussion on Enforcement of Child Support Obligations, infra.

[105] See "Administrative Conference Report," pp. 77–78.

execution of State and Federal requirements occur throughout a State. Furthermore, the State is hampered in much the same way as HEW in effecting compliance. Often the county law violations are as serious or more serious than the State's law violations.[106] It has been estimated by the legislative analyst of the State of California that California could save $50 million a year if State administration were implemented.[107]

C. A Final Recommendation

A potentially more controversial recommendation is offered in conclusion. Regardless of the type of income maintenance system developed, consideration should be given to holding individual administrators personally accountable in damages if an intentional law violation by them is established.

This recommendation has already been made by a joint legislative subcommittee in California after its examination of the implementation by the California Department of Social Welfare of the 1971 Welfare Reform Act.[108] It has also been suggested by the authors of the Administrative Conference Report.[109]

The case for individual accountability is strong. The threat of such a sanction might well contribute to a greater adherence to the law by welfare administrators and avoid severe deprivation which often flows from illegal county or State action.

Other recommendations to achieve conformity have been offered by private and public bodies charged with a review of Federal grant-in-aid programs and the welfare program specifically. To encourage further discussion and to lend further support to the above suggestions, Recommendation 31 of the Administrative Conference Report is included in Supplement A.[110]

IV. Enforcement of Child Support Obligations

A. Introduction

The final section of this paper will deal with a related but necessarily distinct topic of enforcing child support obligations.

At the outset, it should be recognized that difficulties with the en-

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[106] See, e.g., *Ramosy* v. *County of Madera*, 4 Cal. 3d 685, 484 P. 2d 93, 94 Cal. Rptr. 421 (1971) where the county in violation of State and Federal law forced school age children to work in the fields upon pain of termination of their welfare grants.

[107] Analysis of the budget bill of the State of California for the fiscal year July 1, 1971, to June 30, 1972. "Report of the Legislative Analyst to the Joint Legislative Budget Committee," p. 676.

[108] See n. 63, supra.

[109] See "Administrative Conference Report," p. 79. See n. 79, supra.

[110] The Administrative Conference of the United States, a permanent, independent Federal agency, is engaged in the improvement of the procedures of Federal departments and agencies. 5 United States Code §§ 571–576. The objective of the Conference is to assist agencies in the more effective performance of their functions while providing greater fairness and expedition to participants and lower costs to taxpayers.

forcement of such obligations are not limited to welfare families.[111] Fueled by a growing number of divorces, separations, and desertions, the problem cuts across all social and economic lines.[112] The failure to provide support is most visible in the welfare community because it is there where society replaces the absent parent as the primary means of support.[113] Therefore, beyond any moral or ethical concern as to where the responsibility for support should lie,[114] society has an important fiscal stake in assuring that as many parents of welfare children as possible meet their support obligations.

B. Existing Enforcement Procedures in Theory and in Practice

From a purely academic standpoint, a highly effective "threat" system has been developed to compel absent parents to contribute to the support of their children. Most States provide both civil and criminal sanctions for the purpose of securing child support.[115] Alternatives include contempt of court hearings, civil suits, and prosecutions for misdemeanors or felonies. There are interstate compacts for locating deserting parents and enforcing support laws.[116] In addition, the public is exposed to a constant media message of vigorous law enforcement.

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[111] "The (exact) extent of child nonsupport among family units not seeking public assistance is unknown since no agency is charged with the collection and distribution of this data." Eckhardt, "Deviance, Visibility, and Legal Action: The Duty to Support," 15 Social Problems 470 (1968). However, researchers for the Rand Corp. were impressed by the number of well-off physicians and attorneys whose families ultimately were forced onto AFDC because of their failure to meet support obligations. Winston and Forsher, "Nonsupport of Legitimate Children by Affluent Fathers as a Cause of Poverty and Welfare Dependence," a study for Rand Corp. (1971), p. 15 (hereinafter referred to as "Rand Report"). "[California Department of Social Welfare Director Robert] Carleson estimates that there may be as many as 700,000 parents not fulfilling their obligation to support their children—about 250,000 of them parents of children on welfare who may be there just because of this lack of support." California Department of Social Welfare Press Release No. 30–72, Apr. 7, 1972.

[112] See Schorr, Explorations in Social Policy (1968), p. 23.

[113] Continued absence of the father from the home was the basis of AFDC eligibility for 76.2 percent of the national AFDC caseload in 1971. Report of the Committee on Finance, U.S. Senate, to accompany H.R. 1, Social Security Amendments of 1972, Senate Report No. 92–1230, Sept. 26, 1972 (hereinafter referred to as "Senate Finance Committee Report"), table 11, p. 127.

[114] For a short discussion of the factors which should be considered in establishing a child support policy, see Zuckerman, "Familial Responsibility: Legal Provisions which Cause Family Stress," in Equal Justice, pub. by the American Public Welfare Association (1965), at pp. 15–17. "It is the position of the [California] State Social Welfare Board that our children have an undisputed right to support from their parents and this basic moral and legal obligation should only be assumed by others when circumstances beyond the control of the parents prevent their fulfilling this responsibility." California State Social Welfare Board, Guide for Administration and Conduct of a Coordinated Child Support Program by California Counties (1971) (hereinafter referred to as "Child Support Guide"), Forward.

[115] For a good summary of California child support laws, see Child Support Guide, pp. 6–12.

[116] The California version of the Uniform Reciprocal Enforcement Act is set forth in California Code of Civil Procedure §§ 1650–97. The act provides for the civil enforcement of support obligations when the obligor and obligee reside in different States or in different counties of the same State. The act also provides for extradition of the obligor to face criminal prosecution if civil enforcement is not effective.

Despite the strengthening of child support laws in many States,[117] the fact remains that effective enforcement is the exception rather than the rule. Researchers for the Rand Corp. cite a study that shows "a large discrepancy between the normative law as expressed in the statutes and the law in action." [118] A recent Senate Finance Committee report notes that "[h]undreds of thousands of unserved child support warrants pile up in many jurisdictions and often traffic cases have a higher priority." [119]

Another study of the nonenforcement of child support obligations is provided by Kenneth Eckhardt, of the College of Wooster.[120] He gathered data from a sample of fathers who were ordered to pay child support in a metropolitan Wisconsin county. Eckhardt's findings are contained in supplement B. They indicate that fathers are unlikely to contribute to the support of their children immediately following a divorce and are even less likely to do so with the passage of time. Furthermore, Eckhardt's findings show that legal action (in the form of contempt proceedings) to enforce support obligations was not instituted against a majority of the fathers not complying with their divorce decrees. The likelihood that a noncomplying father would face a contempt action depended on (1) his social class, (2) his family's need for public assistance, and (3) the prior legal history of the father. About 44 percent of the blue collar as opposed to only 21 percent of the white collar noncomplying fathers faced court action, although there were relatively equal proportions of noncompliance in these two categories.[121] Of the family units seeking public assistance, 89 percent of the corresponding defendant-fathers had contempt actions filed, but of those family units not seeking public assistance, only 24 percent of the corresponding defendant-fathers were involved in court action.[122] Finally, Eckhardt found that a noncomplying father's possession of a prior legal record (felony conviction) significantly affected the decision of the court to initiate legal action and to apply legal sanctions.[123]

The Eckhardt study was limited to cases where a divorce decree ordering support had been obtained. Where the spouse simply deserts or the absent parent is not married to the remaining parent, enforcement is even more difficult—especially where paternity is at issue.

C. Some Explanations for the Failure of Existing Child Support Statutes

Numerous explanations have been offered for the failure of the child support system to operate effectively. A number of them will be discussed briefly.

1. The social bind and the economic dilemma.—Eckhardt suggests that society accepts divorce and the right of remarriage because of conditions producing unstable marriages.[124] He also notes that laws originally designed to preserve the family unit have resulted in a con-

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[117] See discussion infra. p. 41 et seq.
[118] Rand report, p. 18. See n. 111, supra.
[119] Senate Finance Committee Report, p. 506. See note 113, supra.
[120] Eckhardt, op. cit.
[121] Ibid., p. 475.
[122] Ibid., p. 475.
[123] Ibid., p. 475.
[124] Ibid., p. 477. See also Schorr, op. cit., p. 53.

tinuing obligation of the father to support his family.[125] Public sentiment also favors the continuing support obligation of the father.[126] Thus, law enforcement officials are caught between two often conflicting but socially approved phenomena. For example, a father who has remarried may not be able to support both his families. If he supports only his new family and is imprisoned for not supporting his old family, the State is then forced to support both families.[127] The result of the situation is often a covert tolerance by law enforcement officials of the father's nonsupport of his old family.

2. The disinclination of the courts and prosecutors to enforce child support obligations.—The Rand researchers concluded that "Many lawyers and officials find child support cases boring, and are actually hostile to the concept of fathers' responsibility for children." [128] Nagel and Weitzman state that a "possible explanation for nonenforcement lies in the pro-male bias of the prosecutors, judges, and legislators who could more meaningfully enforce the law." [129]

3. The logistical bind.—Nagel and Weitzman suggest as a third possibility for nonenforcement the "greater complexity of nonsupport cases (especially where interstate enforcement is involved) and the greater age of such claims compared to other, more current cases." [130] The Rand researchers emphasize the difficulty of proving the income of the self-employed, the ease with which unwilling fathers can conceal their assets, the statutory barrier to collecting from Federal salaries, and the low priority given child support investigations by the understaffed district attorneys' offices.[131]

4. The absent parent's lack of available income.—Not to be overlooked is the fact that many absent parents, particularly those with children on welfare, simply do not have the income to provide support. In many cases they have marginal jobs or are unemployed. A study of several California counties in late 1970 disclosed that, while incomes were unknown for half the sample of fathers, over 25 percent of the remaining fathers had no income, 5 percent had incomes under $200 a month, and another 15 percent had incomes under $400 a month.[132]

In the succeeding two sections, changes in existing child support laws offered by congressional committees and by the State of California will be discussed. While the results of such changes are highly debatable, the factors which have impeded effective enforcement in the past will continue to operate with respect to the changes outlined below.

D. Congressional Committee Proposals for More Vigorous Enforcement

Both the Senate Finance Committee and the House Ways and Means Committee, in their respective versions of H.R. 1, proposed solutions

[125] Eckhardt, op. cit., p. 477.
[126] Ibid., n. 2, p. 470.
[127] See Schorr, op. cit., pp. 59–60.
[128] Rand Report, pp. vii and 19.
[129] Nagel and Weitzman, "Women as Litigants," 23 Hastings Law Journal 171 (1971), p. 191.
[130] Ibid.
[131] Rand Report, p. 4.
[132] California State Social Welfare Board, "Final Report of the Task Force on Absent Parent Child Support (1971)," app. 3(c). The study was based upon a

to the problem.[133] Although the Social Security Amendments of 1972 ultimately failed to include any of the committees' proposals,[134] the suggestions are worth reviewing.

1. Proposals applicable to all children needing support.—

(*a*) The Senate bill required the U.S. Attorney General to establish a parent locator service within the U.S. Department of Justice which, upon requests of a local, State, or Federal official with support collection responsibility or of a court with support order authority or of a deserted spouse not on welfare, would provide the most recent address and place of employment available from the files of any Federal or State agency.[135]

(*b*) The Senate bill provided that HEW would establish regional blood typing laboratories for establishing paternity for the U.S. Attorney General, State and local delegate agencies, and the courts.[136]

(*c*) The Senate bill provided for the garnishment of Federal wages and the attachment of Federal annuities in support cases.[137]

(*d*) The Senate bill, besides extending locator services and blood typing services to families not on welfare, also extended child support and paternity determination services to any deserted family.[138]

2. Proposals applicable to welfare children needing support.—

(*a*) Both the House bill and the Senate bill made the desertion by a parent of his child receiving AFDC benefits a criminal offense where the parent failed to provide support.[139]

(*b*) Under the House bill, the Secretary of HEW continued to have responsibility for the supervision of existing Federal child support provisions such as NOLEO.[140] The Senate bill gave administrative and supervisory responsibility to the U.S. Attorney General.[141]

(*c*) The Senate bill required the mother, as a condition of eligibility for welfare, to assign her right to support payments to the Federal Government and required her cooperation in identifying and locating the absent father and in obtaining money or property due the family or Government. The U.S. Attorney General could delegate those rights to the States.[142]

(*d*) Both bills provided that the absent parent would be obligated to the United States in an amount roughly equal to the total amount

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total of 525 cases from Orange, Ventura, Fresno, Contra Costa, and Mendocino Counties during the period Dec. 7–18, 1970. Only 48 percent of the sampled cases contained income data; the remaining 52 percent had unknown incomes.

[133] The Senate Finance Committee report states at 509: "In view of the fact that most States have not implemented the provisions of present law relating to the enforcement of child support and establishment of paternity in a meaningful way, the committee believes that new and stronger legislative action is required in this area which will create a mechanism to require compliance with the law." See note 113, supra.

[134] Public Law 92–603, 86 Stat. 1329 (1972).

[135] "Brief Description of Senate Amendments, Social Security Amendments of 1972," Conference Committee Print 84–712 (hereinafter referred to as "Conference Committee Report"), Oct. 11, 1972, p. 52.

[136] Ibid., pp. 54–55.

[137] Ibid., p. 55.

[138] Ibid., p. 55.

[139] Ibid., p. 47.

[140] In 1950 Congress provided for the prompt notice to law enforcement officials (NOLEO) of the furnishing of AFDC with respect to a child that had been deserted or abandoned. See Senate Finance Committee Report, p. 507.

[141] Conference Committee Report, pp. 47–48.

[142] Ibid., pp. 48–49.

of welfare paid less any support payments which he made to the family. The House bill limited the obligation to the amount ordered by a court. The Senate bill limited the obligation to the lesser of $50 per month or 50 percent of the absent parent's income.[143]

(*e*) Both bills provided for the Federal enforcement and collection of support liability. The House bill provided for collection from money due the deserting parent by the Federal Government. The Senate bill gave the U.S. Attorney General the authority to bring civil action or to use Internal Revenue Service collection procedures.[144]

(*f*) Both bills provided an incentive to secure child support in the form of an income exemption. The House bill exempted one-third of support payments from consideration as income for welfare purposes; the Senate bill disregarded the first $20.[145]

g. The Senate bill provided that States or their political subdivisions would reimburse the Federal Child Support Fund for the cost of using Federal location and child support collection facilities.[146]

h. Both bills provided greater financial incentives for State and local effort to enforce child support obligations. The Federal matching share for State expenses would be increased from 50 percent to 75 percent. If the actual collection was made by the State, the Senate bill allowed it to keep an amount equal to 25 percent of the Federal share.[147]

i. Both bills required the States to seek support for the abandoned mother in addition to the children. The Senate bill also required that States or counties establish parent locator services and cooperate with each other in securing support.[148]

E. California Action for More Vigorous Enforcement

In light of the ineffectiveness of existing child support statutes, California recently adopted several new enforcement provisions as a part of the State's Welfare Reform Act of 1971.[149] A Study based on 1970 data indicated that only 14.7 percent of the absent fathers of California's welfare children were paying anything for their support.[150] The following provisions are now being implemented:

1. The county grand jury was given responsibility for monitoring local child support enforcement activities because so many county agencies are involved.[151] An auditor appointed by the grand jury must conduct an annual review of the county child support collection program.[152]

2. In order to facilitate file identification and data retrieval, social security numbers of both parents are required to be listed on birth cer-

[143] Ibid., pp. 49–50.
[144] Ibid., pp. 50–51.
[145] Ibid., pp. 51–52.
[146] Ibid., pp. 52–53.
[147] Ibid., pp. 53–54.
[148] Ibid., p. 54.
[149] The Welfare Reform Act of 1971, Cal. Stats. 1971, Ch. 578, was signed into law August 1971, and placed into effect on October 1, 1971, as an emergency measure.
[150] California State Social Welfare Board, "Final Report of the Task Force on Absent Parent Child Support" (1971), Appendix 1. The percentage of contributing fathers declined from 20 percent in June 1969, to 14.7 percent in June 1970.
[151] State Social Welfare Board, "A Perspective on the Child Support Provisions of the Welfare Reform Act of 1971" (1971), pp. 6–7.
[152] Ibid., p. 7.

tificates, on certificates of eligibility and redeterminations of eligibility for welfare, and on certain absent parent financial statements.[153]

3. The time limit for the county welfare departments to refer welfare nonsupport cases to the county district attorney was shortened from 45 to 30 days. The district attorney can request immediate referral.[154]

4. Attachment of the earnings of the absent parents has been made easier. Also, the amount of earnings exempt from attachment has been reduced.[155]

5. The courts are now permitted to order the obligor to pay the county reasonable attorney fees and court costs in any proceeding brought by the county for child support.[156]

6. A debt is created payable to the State in the amount of the public assistance paid to the family as a result of a parent's separation or desertion. The obligation is limited to the amount of support specified in any court order.[157]

7. The act provides fiscal incentives for the counties to enforce child support obligations. The act established the Support Enforcement Incentive Fund (SEIF) and appropriated State funds for the purpose of offsetting county welfare costs to the extent of 21.25 percent of the amounts received or collected from absent welfare parents. Since it is claimed that the cost of collection represents only 10 percent of the support payments, SEIF is expected to provide an incentive to county governments to enforce child support obligations.[158]

In the first year of its existence, SEIF disbursed $3.6 million to the counties. All but two of California's 58 counties are participating in the program.[159] According to a press release issued by the California department of social welfare:

> Under SEIF counties retain an amount equal to 75 percent of the non-Federal funds saved by collecting support from absent parents of children on Aid to Families with Dependent Children. The SEIF makes child support activities self-supporting and district attorneys have been able to increase their investigative and legal staffs for this purpose. The larger staffs are also able to chase nonsupporting fathers of children who are not on welfare.[160]

Critics of the new incentive plan believe that enforcement has not been materially aided by the new provisions. Further data are needed to evaluate the statute's effectiveness, but because of the factors previously discussed, these provisions will not eliminate the child support problem.

F. Conclusions

As long as conflicting social values are operating on the child support enforcement system, the system will have serious problems. On one hand society permits divorce and encourages remarriage, but on

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[153] Ibid., pp. 7–8.
[154] Ibid., p. 9.
[155] Ibid., p. 10.
[156] Ibid., p. 11.
[157] Ibid., p. 13. The appropriate statute is Cal. Welf. and Inst. Code § 15200.1.
[158] California State Social Welfare Board, "A Perspective on the Child Support Provisions of the Welfare Reform Act of 1971" (1971), pp. 13–14.
[159] California Department of Social Welfare Press Release No. 94–72, October 10, 1972.
[160] California Department of Social Welfare Press Release No. 55–72, June 19, 1972.

the other it requires the parent to maintain his support of his first family. As long as society chooses to make the parent rather than the community bear the primary obligation to support, then society will seek still more vigorous enforcement of the support laws. But social value inconsistency will be expressed at the local level as ambivalence toward strong enforcement.

Although vigorous prosecution may be justified in flagrant cases, it is not generally a realistic remedy for the enforcement of child support orders. What is needed is a system of public assistance which would contribute to family stability and encourage child support payments where a family has been fragmented.

As the system presently operates, there is often a financial incentive for the father to leave the home. If he is able bodied and unemployed and there is no AFDC–UF program in the State,[161] the family is not eligible for Federal aid if the father is in the home. There is also a financial incentive for low wage earners to leave their families to enable them to qualify for aid.[162] The House version of H.R. 1 recognized the inequity of excluding the working poor from welfare.[163]

Incentives are needed to encourage child support by absent fathers.[164] Under the present system there is a 100-percent tax on absent father contributions in the form of dollar-for-dollar reductions in the welfare grant.[165] A father has little incentive to "support" his AFDC children when he knows that his children will receive the same amount of aid regardless of whether or not he contributes. There has already been some evidence to support the view that exempting a portion of child support payments will encourage absent father contributions. A few years ago California permitted the exemption of a reasonable amount of child support if the money were placed in a trust fund for the educational needs of the AFDC child.[166] Prior to the repeal of the provision in 1969, several thousand families had established educational trust funds. The value of the regulation was underscored by the adoption of a unanimous resolution of the California State Assembly urging its retention.[167]

Beyond the provision of incentives and the development of new enforcement procedures, society must take a hard look at whether the present system really provides proper aid and security for the children of broken families. If what is at stake is the well-being of these children rather than only a savings of welfare dollars, broader solutions may be needed.

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[161] Only 23 States have AFDC–UF programs. HEW, "Characteristics of State Public Assistance Plans under the Social Security Act," Public Assistance Report No. 50 (1970).

[162] For a poignant example of the exclusion of the working poor from AFDC, see *Macias* v. *Finch*, No. 50956 (N.D. Cal., Jan. 5, 1970), *aff'd* 400 U.S. 913, 91 S.Ct. 180 (1970). See also the discussion in Schorr, op. cit. p. 32.

[163] Report of the Committee on Ways and Means on H.R. 1, Social Security Amendments of 1971 (hereinafter referred to as House Report), House Report No. 92–231, May 26, 1971, p. 160.

[164] See n. 145, supra. See also House Report, p. 178.

[165] See California Department of Social Welfare, "Manual of Policies and Procedures," sections 44–133.6 and 44–315.4.

[166] The regulation (now repealed) was California Department of Social Welfare, "Manual of Policies and Procedures," sec. 44–113.243; see Calif. Welf. and Inst. Code, sec. 11258.

[167] 1969 Legislative session, Assembly Resolution No. 401.

Without eliminating the enforcement of child support obligations by governmental authorities, consideration should be given to the proper and adequate care of the deprived children. There is little debate that AFDC as a means of support is both demeaning and inadequate. What is needed, as some knowledgeable commentators have suggested, is a system of social insurance to cover the "socially orphaned," similar to survivor's insurance which covers the "actually orphaned":

> Now, partly because we have solved other problems and partly because the problem of socially orphaned children looms larger every year, we confront an intrinsic irony in social security: It is far worse for children that their father should be separated from them than that he should die.[168]

SUPPLEMENT A

Recommendation 31. Enforcement of Standards in Federal Grant-in-Aid Programs [169]

Federal agencies annually disburse billions of dollars in grants-in-aid to State and local governments and to private entities to subsidize activities in such areas as welfare, housing, transportation, urban development and renewal, law enforcement, education, pollution control, and health. While State and local governments and private organizations are the direct recipients of the grants, the intended ultimate beneficiaries of the grant programs are private persons helped by the expanded level of support or services made possible by Federal funds.

In administering these grants both public and private grantees must observe the Federal grant standards established to assure the accomplishment of Federal purposes. Federal agencies have often encountered difficulty in enforcing compliance by the grantees with the Federal standards. A factor contributing to this difficulty is that many Federal agencies do not have adequate procedures for resolving questions of compliance and for handling complaints by private persons affected by a grant-in-aid program that the program does not comply with Federal standards. A further contributing factor is that the principal sanction presently available to Federal agencies for securing compliance is to cut off the flow of Federal funds. This sanction raises a serious problem because, unless its threatened imposition prompts compliance, it stops worthwhile programs and adversely affects the interests of the innocent private persons whom the Congress intended to benefit through the program of Federal financial assistance.

To aid in alleviating this situation the following recommendations are proposed with respect to each Federal program in aid of State, local, or private activities through which support or services are provided to individual beneficiaries or to the public generally. However, the recommendation does not apply to research, training, or demonstration grants to government units or private organizations or individuals, or to grants such as fellowship grants to individuals that primarily benefit the recipients of the grants.

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[168] For a further discussion of the need for this program, see Schorr, op. cit. pp. 54–67.

[169] Adopted December 7, 1971, by the Administrative Conference of the United States.

RECOMMENDATION

A. The Federal administrative complaint procedure

The Federal grantor agency should have an administrative procedure for the receipt and impartial consideration of complaints by persons affected by the grant-in-aid program that a plan, project application, or other data submitted by a grant applicant or grantee as a basis for Federal funding does not meet one or more Federal standards. This procedure should afford the complainant an opportunity to submit to the grantor agency for its consideration data and argument in support of the complaint, and should afford the grant applicant or grantee involved a fair opportunity to respond. If the agency determines that the complaint is apparently ill-founded or is insubstantial, it should notify the complainant of its determination and should state in writing the reasons therefor. If the agency determines that the complaint appears to be substantial and supported by the information at hand, it should so notify both the complainant and the grant applicant or grantee of its present determination in this respect and should state in writing the reasons therefor. If the agency exercises discretion not to make a determination on one or more issues raised by a complaint, it should so notify the complainant in writing. The agency should pass upon all complaints within a prescribed period of time.

The complaint procedure administered by the Federal grantor agency should also provide for the receipt and impartial consideration of complaints that a grantee has in its administration of the funded program failed to comply with one or more Federal standards. It is anticipated that many grantor agencies will find it necessary to limit their consideration of such complaints to situations in which the complainant raises issues which affect a substantial number of persons or which are particularly important to the effectuation of Federal policy and will, therefore, dispose of most individual complaints concerning grantee administration by referring the complainant to such complaint procedures as are required to be established by the grantee. The grantor agency should seek by regulation to define the classes of cases that it will consider sufficiently substantial to warrant processing through the Federal complaint procedure and those classes of cases wherein complainants will be required to pursue a remedy through available complaint procedures administered by the grantee.

B. The grantee's administrative complaint procedures

The Federal grantor agency should require as a grant condition the establishment by the grantee of procedures to handle complaints concerning the grantee's operation of the federally assisted program. These procedures should afford any person affected by an action of the grantee in the operation of the program a fair opportunity to contest that action. The "fair opportunity" to contest will necessarily vary with the nature of the issues involved and the identity and interests of the complainant. In all cases, however, the complainant should have the right to submit to the grantee for its consideration data and argument in support of the complainant's position.

C. The information system

The Federal grantor agency should seek to assure that persons affected by a grant-in-aid program receive adequate information about the program in order that they may take advantage of the Federal and the grantee complaint procedures. The Federal grantor agency should require as a grant condition that all program materials (regulations, handbooks, manuals, et cetera) governing the grantee's administration of a program supported in whole or in part by Federal grant-in-aid funds, and all plans, applications, and other documents required to be submitted to the Federal agency as a condition to the receipt of Federal funds, should be readily accessible to persons affected or likely to be affected by the operation of the funded program. Plans, applications, and other documents that provide the basis for Federal funding should be made readily accessible to interested persons no later than the time of their submission to the grantor agency for approval and at an earlier time when required by law.

The Federal grantor agency should seek to assure that the grantee's system for dissemination of program materials and grant submissions takes account of the nature, location, and representation of affected persons. For example, as a part of a plan to make such materials readily accessible, program information might be deposited not only in the offices of the grantee but also in public and university libraries and in the offices of affected interest groups and their legal representatives. It might also be necessary to require the provision of descriptive summaries of technical rules or project applications, or to require an oral explanation of program features; for example, the complaint procedures, which are critical to the protection of a beneficiary's interests. The Fèderal agency should make parallel efforts to disseminate materials relating to its administration of the Federal grant program.

D. Range of sanctions

The Federal grantor agency should seek to develop an adequate range of sanctions for insuring compliance with Federal standards by grantees that apply for or receive Federal financial assistance. The sanction of the total denial or cutoff of Federal funds should be retained and used where necessary to obtain compliance, but the agency should have available lesser sanctions that do not result in the prevention or discontinuance of beneficial programs and projects. This range of sanctions should include in appropriate cases:

1. The public disclosure by the agency of a grantee's failure to comply with Federal standards and an indication of the steps believed by the agency now to be appropriate.
2. An injunctive action brought by the agency or the Department of Justice in the Federal courts to require the grantee to fulfill any assurances of compliance with Federal standards made by the grantee or to enforce the Federal standards attached to the grant.
3. The disallowance as a program or project cost of an expenditure by the grantee that does not conform with Federal standards, or other partial denial or cutoff of funds that affects only that portion of a

program or project that is not in compliance with Federal standards.

4. The imposition on a grantee who has not complied with Federal standards of additional administrative requirements specially designed to assure that the grantee brings its operations into compliance with Federal standards and redresses the effects of past noncompliance.

5. The transfer of a grant, or the awarding of subsequent grants under the same or related grant-in-aid programs, to a different grantee if the original grantee violates Federal standards.

Where an agency lacks statutory authority to invoke one or more of the above sanctions and such authority would provide an appropriate means of insuring compliance with Federal standards in a grant-in-aid program administered by the agency, it should seek the necessary authority from the Congress.

E. Other performance incentives

The agency should also consider the provision of incentives, such as the contribution of an increased matching share or the awarding of additional grant funds, to grantees who fulfill certain Federal goals. Where the agency lacks statutory authority to provide compliance incentives and such authority would provide an appropriate means of insuring effectuation of Federal objectives in a grant-in-aid program administered by the agency, it should seek the necessary authority from the Congress.

Supplement B

The probability of a divorced woman collecting any child support money (by years since the court order)

Years since court order	Number of open cases	Full compliance (percent)	Partial compliance (percent)	No compliance (percent)	Nonpaying fathers against whom legal action was taken (percent)
1	163	38	20	42	19
2	163	28	20	52	32
3	161	26	14	60	21
4	161	22	11	67	18
5	160	19	14	67	9
6	158	17	12	71	6
7	157	17	12	71	4
8	155	17	8	75	2
9	155	17	8	75	0
10	149	13	8	79	1

Based on data from Kenneth Eckhardt, "Deviance, Visibility, and Legal Action: The Duty to Support," 15 Social Problems 470, 473-474 (1968).

LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL CHANGES IN THE AFDC PROGRAM, 1967–71

By Irene Lurie*

In recent years, discussion of ways to reform Aid to Families with Dependent Children (AFDC) has eclipsed the changes that were actually occurring in the program. The changes were made piecemeal, without a consistent set of objectives, in legislatures, courts, and welfare departments at all levels of government. Some were intended to restrict the program while others were explicitly liberalizing. Few of these changes have received the attention that is warranted by their impact on welfare costs and on the recipients themselves.

The changes described here are those which occurred between 1967 and 1971.[1] During this period, the number of people receiving AFDC doubled, growing from 5.3 million to 10.6 million. In 1970 alone, the number of recipients grew by 32 percent. AFDC payments grew even faster, from $2.2 billion in 1967 to $6.2 billion in 1971. Legislative, administrative, and judicial changes are not, of course, the only factors explaining this explosion. Changes in people's behavior concerning family formation and dissolution, fertility, work effort, the decision to apply for welfare, and migration were important, as well as changes in aggregate economic conditions which affect the economic position of low-income people. But describing the changes in the program itself is a preliminary step in determining the impact on the caseload of changes in people's behavior and in economic conditions. We cannot discover whether behavioral reactions to program parameters have changed until we know what these parameters are; nor can the effect of economic conditions on a pool of eligible people be determined unless we know who these eligibles are.

The first section of this paper describes the 1967 amendments to the Social Security Act which encouraged or required the States to make significant changes in their AFDC programs. The response of the States to these amendments will be described where the necessary information is available, and some attempt will be made to assess the effect of these changes on the caseload. Section II describes the modifications which States have made in the administration of their programs in response to regulations issued by the Department of Health,

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[1] The most important single change since 1971 is the amendment to the Social Security Act sponsored by Senator Talmadge requiring AFDC recipients to register for work. The amendment became effective July 1, 1972.

Education, and Welfare. Section III presents a list of decisions by the U.S. Supreme Court concerning the AFDC program.

Hopefully, much of this paper is accurate. Obtaining information about the operation of AFDC is difficult, more difficult than it should be. It should be the role of the Federal Government to describe the States' AFDC programs and the changes in these programs, but the Social and Rehabilitation Service within HEW makes an inadequate effort to provide the public with information on the operation of the Nation's largest and most controversial welfare program. HEW's publication, "Characteristics of State Public Assistance Plans Under the Social Security Act," gives the bare bones outline of the State programs but leaves out many details and does not give thorough definitions of some important terms used. The National Center for Social Statistics within HEW issues tables showing the number of recipients, payment levels, cost standards, cases opened and closed, and other program statistics. While these tables are invaluable, the National Center for Social Statistics does not interpret or analyze these statistics or describe how the programs actually operate.

To someone who is unfamiliar with the AFDC program, these data are largely meaningless and often misleading. Until the late 1960's, the Federal administrative regulations concerning public assistance were not routinely made available to the public. While they are now published in the Federal Register, HEW does not publish information on which States fail to comply with these regulations. Welfare in Review, the journal of the Social and Rehabilitation Service, ceased publication in mid-1972. It published some relevant analysis of the public assistance programs in its early years, but during the late 1960's and early 1970's rarely contained articles about the welfare system and no longer even published statistics on the number of welfare recipients and the amount of welfare payments. This journal would have been the ideal place to publish more detailed and less structured descriptions of the operation of programs and analyses of their impact on low-income families.

Summary of the Major Changes in the AFDC Program

The 1967 amendments to the Social Security Act contained provisions both to contract and expand the AFDC program. The restrictive measure which received the most publicity at the time was the AFDC "freeze." In a brute force attempt to slow the growth in the caseload, the act froze the number of children with respect to whom the Federal Government would provide matching funds to the States.[2] If the

[2] In any calendar quarter of year y, the average monthly number of AFDC children under 18 who have an absent parent could not exceed N where

$$\frac{N}{\text{total children under 18, January 1, year } y,} = \frac{\text{average monthly number of such AFDC children, January 1 to March 31, 1968}}{\text{total children under 18, January 1, 1968}}$$

This meant that the number of federally supported AFDC children who had been deprived of parental support or care by reason of the continued absence from the home of a parent would only be allowed to grow as fast as the child population. The States could give money to more children, but they would have to pay the full cost.

States gave payments to more children, they would have to finance it entirely with their own funds. But this measure was so harsh, and was so opposed by the States, that Congress repealed it in July 1969.

Less harsh, but with the similar objective of slowing the growth in the rolls, were the work incentive provisions of the act. The work incentive (WIN) program was created to provide training, work experience, and jobs for welfare recipients. Administered by the Department of Labor, WIN was passed in the belief that many recipients were employable and could work if they were given the proper encouragement and services. In order to provide a further incentive for recipients to work, the States were required to disregard the first $30 of income earned by a family in a month plus one-third of the remainder in computing an eligible family's benefit.

The WIN program, at a cost of about $250 million, had moved less than 30,000 families off the AFDC rolls by the end of fiscal year 1971. This is an insignificant amount relative to the growth in the rolls. The new earnings disregard, instead of decreasing welfare dependency as anticipated, was one of the primary liberalizations of the program during this period. When income is disregarded in determining the AFDC payment, payments decrease more gradually as income increases, and families continue to receive payments at higher income levels than they would if income were not disregarded. While the disregard may encourage recipients to work, they are not as likely to work their way off welfare. The increase in the income levels at which families leave the program is shown in table 2, p. 89.

The broadening of social services required by the 1967 amendments was also intended to increase families' capabilities for self-support. Emphasis was placed on providing employment counseling, job referral, day care, and birth control information. To insure that an adequate supply of services would be available, welfare agencies were permitted to purchase services from other governmental units and from private agencies. A great increase in services was forthcoming, or at least the skyrocketing of expenditures on services would suggest such an increase. How much of the growth in expenditures actually resulted in increased services for welfare recipients, and how much of it was spent on services for other people and on administration is not known. It is also an open question whether services are effective in reducing families' need for welfare.

The liberalizing sections of the 1967 amendments include the requirement that States increase their cost standards to adjust for increases in the cost of living, the liberalization of aid to foster children, and the introduction of the emergency assistance program. Increasing cost standards by the amounts required by the act would have meant large increases in payment levels and in the number of eligible families in some States. States were therefore reluctant to update their cost standards and HEW was reluctant to force them to do so. The issue was brought before the U.S. Supreme Court which interpreted the updating requirement to mean that States must increase their eligibility standards but not necessarily their payment levels. The requirement was brought before the Court a second time and was interpreted to mean that the States need not even increase their eligibility standards. In spite of this, cost standards have increased since 1967. Changes in the cost standards and in the methods used by the States to limit payments are presented in table 1, p. 86.

States have been permitted to give aid to AFDC children living in foster homes and institutions since 1961. The 1967 amendments required that States extend aid to them. As a result, the number of recipient children in foster care increased more than fivefold, to 70,000. The other extension in eligibility was to families in need of immediate help who are unable to wait the time usually needed to determine eligibility and authorize payments. In order to prevent abuse of this emergency assistance program, a family cannot receive assistance from the program for more than 1 month a year, and the program has remained small.

The medicaid amendments of 1965, in a provision that has received little notice, gave States the option of using an alternative formula to determine their matching grant from the Federal Government. By June 1970, 28 States found that they could obtain more funds using the new formula. A rough estimate is that States received 25 percent more money from the Federal Government due to the adoption of the optional formula.

HEW has encouraged or required the States to make three significant changes in the administration of their welfare programs. First, States have been encouraged to separate the provision of money payments from the delivery of social services. Separation of the two functions frees trained social workers from having to determine eligibility and payments, and should enable them to provide more effective services. Some, but not all, States have made progress in this organizational change.

Second, States have been given the option of determining AFDC eligibility and payments according to a new "simplified method." Under this system, applicants for AFDC give the welfare department the relevant information by filling out a form, and payments are made without routinely verifying the information provided. In the use of a form, the method is similar to the method of determining income tax liability. However, it differs from the income tax procedure in the amount of checking of information which is permissible in certain circumstances. At the end of 1971, 41 States used the simplified method to some degree.

As a result of the simplified method and of allegations of welfare fraud, HEW required the States to adopt the "quality control" system. Quality control is a procedure for checking the accuracy of information provided by recipients and of actions taken by caseworkers. States which have implemented the system found that, in April 1971, errors had been made in determining the eligibility of or payments for 28.6 percent of AFDC families. The cause of error was attributed about equally to recipients and welfare agencies. According to other data collected by HEW, willful fraud by recipients seems to be a relatively small source of the error.

The U.S. Supreme Court is responsible for several of the changes in the AFDC program over the past several years.[3] Between 1968 and 1970, the Court eliminated the substitute father rule, the durational

[3] The major court decisions are discussed below.

residence requirement, and the "man assuming the role of spouse" rule. It required fair hearings for recipients whose benefits were to be reduced or terminated, and it implied that welfare benefits had the status of property. These victories for welfare recipients resulted in a more equitable system and, undoubtedly, some increase in the welfare rolls. As the composition of the Court changed, so did the tone of its decisions. Between 1970 and 1972, a maximum payment was ruled to be an acceptable method of limiting payments, home visits by caseworkers were not considered to be an invasion of personal privacy, and the use of a reduced standard was deemed to be appropriate. On balance, however, the Court did liberalize the AFDC program.

I. The Social Security Amendments of 1967

The Johnson administration's welfare proposals made in early 1967 were, for the most part, an effort to make AFDC more adequate and equitable. The House Ways and Means Committee under Wilbur Mills was, in contrast, concerned primarily with stopping the growth in the caseload. Compromise produced a curious mixture of provisions to contract and liberalize the program.

Social Services

While some social services have always been given to AFDC recipients in the process of administering the money payments, Congress did not provide for Federal financial support of social services until 1956. The 1962 amendments to the Social Security Act liberalized the Federal matching provisions and permitted HEW to require the States to provide certain minimum services. Services could be provided both to recipients and to people who were likely to become recipients. The 1967 amendments broadened the program of services that States were required to provide. The emphasis of these provisions was on services which would increase the employment of welfare recipients. Services such as employment counseling, job referral, employability testing, and day care were to complement the WIN program and the $30 and one-third earnings exemption. The States were specifically required to offer family planning information and services. Because the States might not have the ability to provide services in sufficient quantity, they were given permission to purchase services from other sources, both other Government agencies and private agencies. The amendments also required that services for AFDC families be furnished by the same organizational unit as that providing child welfare services. The Congress felt that furnishing AFDC and child welfare services in different agencies "diminishes the prospect of the State being able to concentrate the available help for the families that need this help." [4]

Expenditures for services have grown very rapidly since 1967. In fiscal year 1967, expenditures for AFDC services, administration, and training combined were $386 million. By 1970, they had grown to $881

[4] Report of the Committee on Ways and Means on H.R. 12080, August 7, 1967, p. 98.

million.[5] Data on expenditures for services alone are available for fiscal 1970 and later years. Expenditures rose dramatically from $546 million in 1970 to $754 million in 1971 to $1,720 million in 1972.[6]

It is difficult to determine to what extent these increased expenditures for services actually represent increased services provided to AFDC recipients. HEW staff admit that these figures seriously overstate the amount of services delivered, and that most of the caseworkers' time is still spent determining eligibility and payment levels. The Federal Government pays 75 percent of the States' expenditures on services but only 50 percent of expenditures for administration, so that States have an incentive to bill caseworkers' time as services instead of administration. The actual amount of caseworkers' time devoted to services remains unknown.

Two other features of the Federal law cause these data on expenditures to overstate the increase in services provided to welfare recipients. The Federal Government will fund services for people who are not on welfare but who are potential recipients. Secondly, services can be purchased from other Government agencies and from private agencies. This means that funds for social services under the public assistance titles can be used for services provided outside the welfare agencies that have little direct impact on welfare recipients. For example, funds can be given to correctional institutions and drug treatment centers even though the majority of the people served are not on welfare. In some places funds can be used to purchase day care services for women who are not on welfare. Published data do not permit an estimate of the extent to which expenditures on services are being used to help people who are not on welfare, but it may have become considerable in the past few years.

The effectiveness of social services in reducing welfare dependency has yet to be conclusively demonstrated. Even if all the expenditures billed as services were actually being used to provide services, they may have had little impact on the caseload. Handler and Hollingsworth, for example, found that social service activity in Wisconsin is "* * * little more than a relatively infrequent, pleasant chat. It is somewhat supportive. It is rarely threatening but also not too meaningful in the sense of either helping poor people get things they need or in changing their lives."[7] Caseworkers were found to be useful in helping recipients take advantage of the medicaid program, but had little else of a tangible nature to offer them. Recipients' employability seemed unaffected by the services. Other studies of the effect of services on welfare recipients confirm these findings.[8] These studies

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[5] "Expenditures for Public Assistance Payments and for Administrative Costs, by Program and Source of Funds: Fiscal Years 1936–70," National Center for Social Statistics Report F–5 (fiscal years 1936–70), Department of Health, Education, and Welfare. Reports by the NCSS on expenditures have been discontinued.

[6] Data obtained from the Division of Finance, Office of Financial Management, Social and Rehabilitation Service, Department of Health, Education, and Welfare.

[7] Joel F. Handler and Ellen Jane Hollingsworth, The "Deserving Poor," A Study of Welfare Administration (Chicago: Markham Publishing Co., 1971), p. 127.

[8] For a discussion of several other evaluations of social services see Sar A. Levitan, Martin Rein, and David Marwick, Work and Welfare Go Together (Baltimore: The Johns Hopkins University Press, 1972).

were, however, made before the rapid growth in expenditures for services following the 1967 amendments. The long run impact of a "full" program of services, whatever that may mean, has not yet been determined.[9]

The WIN Program

The work incentive or WIN program established by the 1967 amendments is the first federally supported manpower program designed specifically for welfare recipients. WIN, which is administered by the Department of Labor, was designed to provide on-the-job training, institutional and work experience training, work projects for people for whom a regular job cannot be found, and direct referral to jobs for people who do not require training. Welfare departments must refer all appropriate recipients to the Department of Labor other than: (1) children under 16, or over 16 and attending school; (2) people who are old, ill, or incapacitated or who live far from a WIN program; (3) people who are needed in the home because of the illness or incapacity of someone in the household. Unemployed fathers are to be given first priority for referral. The law does not require that mothers be referred to the Department of Labor, but the States can impose such a requirement provided that adequate day care is available. If a recipient refuses, without good cause, to participate in a WIN program or to accept a job, the individual is to be excluded in determining the amount of the family's AFDC benefit. Participants in a training program are paid an incentive payment of up to $30 a month. This payment and wages from work projects are disregarded in determining the AFDC benefit.

While a casual reading of the legislation would suggest that many adult recipients would be referred for WIN, the requirement that welfare agencies refer only those recipients judged to be appropriate has resulted in widely differing policies and probably a lower rate of referral than anticipated by the framers of the law. Only one-quarter of the recipients who have been assessed for participation in WIN have been found appropriate for referral, and fewer were actually referred. As might be expected, child care responsibilities and poor health were the major reasons for being found inappropriate. Of people referred for WIN, less than three-fifths were actually enrolled in the program, while the remainder were referred back to the welfare departments.[10] Some places had waiting lists to enter the program, suggesting that it was attractive to welfare recipients. But the number of people who failed to appear for interviews or refused without good cause to enter the program indicates that its attraction was not universal.

Between October 1968, when the program began and September 1971, 317,000 people were enrolled in WIN projects. Projects providing institutional training, including remedial education, have been most common. Fewer participants have received on-the-job training, and almost no emphasis has been placed on creating jobs through special work projects.

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[9] In fact, it may never be determined. As a part of the Revenue Sharing Act of 1972, the Congress converted the open-ended Federal grants to States for services into a fixed appropriation with formula sharing among the States.

[10] *Ibid.*, pp. 94–95.

Of the 200,000 people who were no longer in the program as of September 1971, the vast majority had not completed it successfully. Only one-fifth, or 43,000, enrollees were placed in jobs and were considered to have successfully completed the program by remaining employed in the 3- to 6-month period of "job entry." [11] The low success rate results, at least in part, from the characteristics of the population WIN is designed to serve. Over one-half of the participants are women with children. Their desire to remain in the program may not always be strong and the need to care for their children can provide a good reason to quit. But the lack of good jobs at the end of the program may be an equally important explanation of the low rate of completion.

Data collected on the work experience and earnings of participants completing the program suggest that people who gain most from WIN are those with the highest earnings potential. People were more likely to be placed in jobs the greater the number of years they had been previously employed and the higher their previous earnings. Increased years of schooling also increased the placement rate, although by more for women than for men. Men were more likely to be placed in jobs than were women and were placed in jobs paying higher wages. They earned an average of $2.50 an hour while women averaged $2 an hour; only 13 percent of the women placed earned $2.50 or more. Women, on the other hand, experienced a greater gain over their previous wage. They gained $.80 an hour while men gained only $.46 an hour, and only 13 percent of women experienced no gain compared with 39 percent of men.[12-13] People who are placed appear to remain in a job. A follow-up study of people who had successfully completed the program found that 80 percent were still employed 6 months later.[14]

The effect of WIN in reducing the need for welfare is dwarfed by the explosion in the caseload. During the period from October 1968 to September 1971, the number of families receiving AFDC grew by 1,354,000. This means that the total number of people placed in a job by WIN was only slightly more than the average monthly increase in the caseload. Furthermore, some people placed in a job did not earn high enough wages to move them off welfare. HEW collects data on the number of families who leave welfare within 6 months of completing their training, or roughly during the period of "job entry." From the beginning of the program through September 1971, 31,300 families left welfare because of employment or increased earnings due to participation in WIN.[15] More than half of these families were receiving AFDC–UF and therefore were headed by a male. Families headed by women, who comprise the bulk of the welfare population, had only a slim chance of being brought out of welfare dependency by the WIN program.

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[11] *Ibid.*, p. 97. The period of job entry, as defined by the Department of Labor, is the period after they are placed in a job but before they terminate the program.

[12-13] "Analysis of WIN Program Termination Data (Fiscal Year 1970)." Analytic Systems, Incorporated, May 1971. Analytic Systems, Inc. found that the data collected on participants terminating the program is adequate for some purposes but "cannot be shown to be statistically valid."

[14] Levitan, Rein, and Marwick, Work and Welfare, p. 99.

[15] National Center for Social Statistics, Reports E–5, Department of Health, Education and Welfare. Data for the quarter July–September 1970, were not reported and were interpolated from the preceding and following quarters.

Changes in Cost Standards and Tax Rates

The AFDC benefits given to families who meet the noneconomic eligibility criteria are determined by a complicated set of rules. Some of the rules are made by the Federal Government and are uniform nationwide, while others are made by the States and vary considerably. These rules changed significantly between 1967 and 1971 as a result of the 1967 amendments and changes made by the States on their own initiative.

The two most important parameters describing the schedule of AFDC benefits are the cost standard and the "tax rate" on income. Cost standards, which are set by the States, are the amounts of money that families of various sizes and compositions are thought to require to satisfy their basic needs. The cost standard is used to determine whether a family is eligible for AFDC; in some States the cost standard is also the amount paid to families with no income. The benefit given to a family with income is determined by the cost standard and the "tax rate" on income, or the amount by which AFDC payments are reduced as income increases. The tax rate on income is determined by statutes and administrative regulations made by both the Federal Government and the States.

In practice, many States do not pay families the full difference between the cost standard and their countable income. Some States limit payments by imposing a maximum on the payment that a family can be given, and the maximum is usually smaller than the cost standard. Some States limit benefits by a "percentage reduction"; that is, paying a percent of the difference between the cost standard and countable income. Recently, as will be discussed below, many States have begun paying the difference between a percent of the cost standard and countable income.

Many of the changes in States' cost standards and tax rates over the past several years were made voluntarily by the States. The changes discussed in detail here are those required by Federal legislation and regulations. After these are discussed, the combined effect of State initiated changes and federally required changes on the benefit schedules will be described.

CHANGES IN THE TAX RATES ON INCOME

The AFDC tax rate, or the rate at which payments are reduced as income increases, depends to a large extent on the amount of income that can be disregarded in calculating the payment. When some of an increase in income is disregarded, the AFDC payment is reduced by less than the increase in income. Disregards, in other words, lower the tax on income.[16]

Prior to the 1967 amendments, the income of AFDC recipients was disregarded only in limited circumstances and at the option of the States. In 1962 States had been given the option of permitting "all or

[16] For a full discussion of the effective tax rates imposed by AFDC and other programs, see papers by Robert I. Lerman, Thad W. Mirer, and Leonard J. Hausman in Income Transfer Programs: How They Tax the Poor (Studies in Public Welfare, Paper No. 4, Subcommittee on Fiscal Policy, Joint Economic Committee print, Dec. 22, 1972).

a portion of the earned or other income to be set aside for future identifiable needs of a dependent child." As of December 1967, 24 States had some sort of provision for exempting income for a child's future identifiable needs, which were usually defined as education or training. In 1965 States were permitted to disregard $5 of income per month in computing the AFDC benefit. They were also given the option of disregarding the earnings of children up to $50 per child and $150 per household. By December 1967, 28 States were disregarding children's earnings, although not always the full amount permitted by the statutes. States were required to disregard work expenses, which may include income and social security taxes, union dues, transportation to work, tools and special clothing, lunches, and child care expenses incurred because of employment.[17] Finally, some income of AFDC recipients was disregarded according to the requirements of other programs, including the Economic Opportunity Act, the Manpower Development and Training Act, and the Elementary and Secondary Education Act.

The $30 and one-third rule.—The 1967 amendments lowered the tax on the earnings of AFDC recipients with the explicit objective of increasing the incentive to work. The amendments require that the States disregard the first $30 of a family's earnings and one-third of the remainder each month in determining the amount of the payment. No limitation is placed on the amount of earnings which must be subject to the one-third disregard. The amendments also require that all of the earnings of a child attending school full time or a part-time student who is not a full-time employee be disregarded completely. The provisions of the laws other than the Social Security Act requiring that earnings be disregarded were made ineffective. States could begin using the disregards immediately and were required to use them by July 1969.

The effect of the $30 and one-third disregard is to reduce the implicit tax rate on earnings and to increase the payments to families with earnings. Connecticut is an example of a typical State. It had a cost standard of $257 in 1967 and paid the entire difference between this and a family's income. Payments were reduced by $1 for every dollar increase in income, and income was therefore taxed at a 100-percent rate. The $30 and one-third disregard would reduce the tax rate to zero on the first $30 and 67 percent on the remainder. Indiana, in comparison, had a cost standard of $271 for a family of four in 1967 but paid a maximum of only $103. Before the amendments, a family would receive $103 if its income was between zero and $168, implying a tax rate of zero on income within this range. Beyond $168, the payment would be reduced $1 for every dollar increase in earnings, implying a 100-percent tax on earnings. If the $30 and one-third disregard had been used with this cost standard and maximum, a family would have received $103 if its income were between zero and $198, implying a zero tax rate within that income range. Beyond $198, the payment would be reduced by 67 cents for every dollar increase in earnings.

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[17] State practice often differs from these Federal regulations. A forthcoming Subcommittee on Fiscal Policy report on local welfare program rules and policies will detail the degree to which such differences do exist.

The disregard raises the "break-even point," or the income level at which a family's benefit falls to zero, above the level of the cost standard. In designing the 1967 amendments, Congress faced the decision whether to give payments to all families whose income falls between the cost standard and the break-even point, or to limit payments to certain families within this range. In the interest of saving money, the 1967 amendments specify that a family cannot become eligible for welfare until its income before deducting $30 of earnings and one-third of the remainder falls below the cost standard. That is, the $30 and one-third disregard is used to determine the amount of a family's payment but not its initial eligibility.[18] The resulting inequity is that a family with a previous income below the cost standard but a current income above it may receive benefits, while a family with the same current income but no recent month with income below the cost standard cannot receive benefits. Nor is the second family eligible for medicaid, unless the State provides medicaid for the "medically needy." This, of course, provides an incentive for families to reduce their income temporarily below the cost standard in order to establish eligibility. The amendment attempts to discourage the deliberate reduction of income by prohibiting the States from disregarding the earnings of persons who stop working or reduce their earnings "without good cause." This sanction has little force, however, because persons who stop working have no earnings to disregard.

According to Federal laws, the States cannot place any limitations on the amount of income subject to the $30 and one-third disregard in determining the payment. That is, the States cannot cut off payments at some gross income level if this is below the break-even point implied by the $30 and one-third disregard. *Amos* v. *Engelman*, 404 U.S. 23, decided by the U.S. Supreme Court on November 9, 1971, upheld this interpretation of the Social Security Act. Some States, however, will not make payments which are below some minimum amount, with the stated purpose of avoiding the relatively high administrative cost of keeping a family on welfare when its benefit is small.

The treatment of work expenses under the $30 and one-third rule.—The 1967 amendments required that work expenses continue to be taken into consideration in determining AFDC payments. The issue that then arose was whether work expenses should be deducted from earnings before or after the deduction of $30 and one-third of remaining earnings. Under the Federal individual income tax, expenses of earning income are deducted from gross income in computing taxable income, which is considered the measure of the ability to pay taxes. If public assistance were to follow the same rule and use income net of work expenses as a measure of the need for welfare, work expenses would be deducted from earnings before the deduction of $30 of earnings and one-third of the remainder. However, HEW requires the States to deduct work expenses from earnings after $30 and one-third of remaining earnings have been deducted. Recipients are, in effect, completely reimbursed for their work expenses.

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[18] Report of the Committee on Ways and Means on H.R. 12080, Aug. 7, 1967, p. 107. The report states that disregarding earnings in determining eligibility as well as the payment would increase the cost of the program by $160 million a year, and the committee felt that saving this amount was worth the resulting inequity.

Payments calculated by deducting work expenses from income after the deduction of the $30 and one-third disregard will be greater than payments calculated by first deducting work expenses, the excess being an amount equal to one-third of work expenses. This sum can be substantial even when work expenses are not unreasonably high. For example, a family which spends $100 on child care, $30 on work clothes, and $50 on taxes will receive $60 more under the former method than under the latter. With differences of this size, it is not surprising that several States were slow to comply with the Federal regulation concerning the treatment of work expenses. By the end of 1971, however, all States were obeying the regulation.

UPDATING COST STANDARDS: SECTION 402(A)(23)

The Johnson administration's welfare proposals made in 1967 would have required the States to pay the "full need" of welfare recipients; that is, the difference between the recipient's income and the State's own cost standards, and to update these cost standards to take account of increases in the cost of living. Congress refused to require the States to pay full need, but the 1967 amendments did require that States update their cost standards to take account of changes in the cost of living. According to section 402(a)(23) of the Social Security Act, each State must "provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted." States would not have to continue updating their cost standards for inflation occurring after that date.

Compliance with the amendment would require increased State expenditures of widely varying amounts. Requiring that States update their cost standards for inflation occurring "since such amounts were established" means that some States would have to increase standards by more, over the long run, than others. States which had recently increased their standards by amounts less than the increase in the cost of living would have to update less than States which had not recently updated and would therefore have to update by an amount equal to the full increase in the cost of living. Furthermore, the amendment takes no account of the variation in the level of prevailing benefits. If two States are required to update their standards by the same percent, a high-benefit State will have to increase standards by a larger dollar amount than a low-benefit State. In this way, greater dollar increases in expenditures are required of States already making high payments than are required of States with low payments.

In spite of the differential impact on the States, there was not much resistance by the States on the grounds that the amendment was inequitable. As the following discussion will show, States have been so successful in avoiding the major thrust of the amendment that they have not bothered contesting these details.[19]

The impact of section 402(a)(23) on the caseload and on payments could have been large, because many States had not recently increased

[19] The avoidance of this provision by the State of California is discussed in detail by Peter Sitkin elsewhere in this volume.

their cost standards to keep pace with the rising cost of living. Wilbur Cohen, testifying before the Senate Finance Committee in 1967, said that only 25 States had increased their standards within the past 2 years and several had not changed their standards in 10 years.[20] Increases in the standard would make more families eligible and, if no restrictive compensating action were taken, would also increase payments to families already on the rolls. These increased costs were presumably to be offset by the work incentive program and the disregard of $30 of earnings and one-third of the remainder, which were supposed to encourage work and reduce the need of recipients. In fact, however, welfare costs skyrocketed between 1967 and 1969, swamping any effect these work incentive features might have had.

HEW's desire for updating cost standards did not survive the change in administrations. The new administration was reluctant to force the States to increase their cost standards at a time when welfare was already a growing financial burden and sweeping reforms were under consideration. The July 1, 1969, deadline for updating passed with little response by the States, and many of the States which did respond did so incorrectly or inadequately. On July 25, HEW, after prodding from the National Welfare Rights Organization, listed 39 States which had failed to comply with HEW's terms on updating.[21] Only in October of that year did HEW give the States its interpretation of section 402(a)(23) and list the acceptable methods for determining the required increase in standards. The agency remained reluctant to take action against the noncomplying States. "* * * [E]ssentially, the administrators were engaged not in implementing the law but in effectuating a delaying action."[22]

The October memorandum to the States left them with considerable discretion in interpreting the updating requirement and the opportunity to devise ways of avoiding it. States have had several methods, in addition to their complete control over cost standards, of limiting payments to welfare recipients. Maximums and percentage reductions have been used for many years to limit payments. In October 1967, 27 States had maximums and five used a percentage reduction. Four States paid the full difference between income and a percentage of the cost standard.[23] States which wanted to resist making additional payments in response to the updating requirement had these several approaches from which to choose, although it was not known whether any of them would be permissible.

States have interpreted section 402(a)(23) in several ways. All States have increased their cost standard, or what will be called below the "full" cost standard. In order to avoid a larger caseload and higher benefits, however, many States have changed their method of determining payments and, indirectly, their method of determining eligibility. These changes have permitted States to reduce payments if they wish

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[20] Hearings before the Committee on Finance, U.S. Senate, 90th Cong., first sess., on H.R. 12080, p. 259.

[21] Robert L. Rabin, "Implementation of the Cost-of-Living Adjustment for AFDC Recipients: A Case Study in Welfare Administration," University of Pennsylvania Law Review, vol. 118, No. 8 (July 1970) p. 1154.

[22] Ibid., p. 1156.

[23] "Money Payments to Recipients of Special Types of Public Assistance, October 1967," National Center for Social Statistics Report D-4 (October 1967), Department of Health, Education, and Welfare.

and to restrict eligibility. Welfare recipients have responded by challenging the States in the courts, and the issue has reached the Supreme Court twice, in *Rosado* v. *Wyman*, 397 U.S. 397, and *Jefferson* v. *Hackney*, 406, U.S. 535.

Rosado v. *Wyman*, decided in April 1970, arose out of a change in the method by which New York computed the needs of welfare recipients. New York had calculated need as the sum of "basic needs," which depended only on the number and age of the children in the family, and "special needs," which varied according to the particular circumstances of the individual family. In 1969, it adopted a system fixing maximum allowances per family based on the number of family members. These maximums did not take into account the amounts which had previously been given as special needs, although a routine quarterly lump-sum payment was instituted in lieu of special needs grants. The net effect was to decrease benefits by about $40 million.

In its decision, the Supreme Court made a distinction between changing the cost standard and changing the level of benefits. It ruled that section 402(a) (23) required States to increase *cost standards*, and that New York's lower standard therefore was not permissible. But from an examination of the section's legislative history, the Court could find no clear indication that Congress intended States to increase *benefits*. Congress had rejected several amendments which would clearly have required increased benefits and instead chose language which was ambiguous.[24] But if States were not required to increase payments, what was the updating of standards supposed to accomplish? The Supreme Court concluded that, "It has the effect of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the care and training provisions."[24a] That is, the effect of updating standards is to increase the number of eligible families.

In order to avoid making higher payments, States could pay less than full need. They could continue to use maximums, provided that these were updated, or they could use a percentage reduction, also called a "ratable reduction." In the Court's words, "A 'ratable reduction' represents a fixed percentage of the standard of need that will be paid to all recipients. In the event that there is some income which is first deducted, the ratable reduction is applied to the amount by which the individual or family income *falls short of need*."[25] (Emphasis added.) But in response to the updating requirement, many States started to apply a ratable reduction to the *standard itself* instead of to the difference between income and the standard. That is, they reduce the standard by some percent and make payments equal to the difference between income and this reduced standard. Obviously, a standard reduced in this way can completely nullify the requirement

[24] As the Supreme Court stated beautifully, the intention of Congress could not be inferred from the legislative history of the bill. "The background of section 402(a) (23) reveals little except that we have before us a child born of the silent union of legislative compromise. Thus, Congress, as it frequently does, has voiced its wishes in muted strains and left it to the courts to discern the theme in the cacophony of political understanding." 397 U.S. 397, 412.

[24a] Ibid., 413.

[25] 397 U.S. 397, 409 footnote.

that States update their cost standards. By January 1971, 21 States were applying a ratable reduction to their cost standards.

HEW supported this procedure, even though it appears to be in direct conflict with the meaning of section 402(a)(23). In January 1970 they issued State letter 1074 which recognized that States were using a reduced standard and requested that States report both the "full" standard and the "payment level," or reduced standard. States were given permission to compute the payment by comparing income less deductions to either the standard or the payment level. In doing this, HEW accepted the States' method of avoiding the use of the updated standard.

HEW maintains that the full, and presumably updated, standard is used to determine eligibility and that the lower standard is used to determine the payment. It can thereby claim that States with two standards are complying with the *Rosado* v. *Wyman* decision, which requires that States update their standard of eligibility but does not require them to increase payments. HEW defines the full standard as "the amount with which income from all sources is compared to determine whether or not (initial) financial eligibility exists. Use of the full standard for this purpose * * * is mandatory only for AFDC applicant families with earned income who have not received assistance in any of the four preceding months." [26] As discussed in a previous section, families which have not received AFDC within 4 months are not permitted to deduct $30 and one-third of remaining earnings when comparing income to the full standard. If their countable income before the earnings disregard is less than the full standard they are considered eligible. According to this HEW definition, "eligibility" does not mean that a family receives a payment, but that it can deduct $30 and one-third of remaining earnings in determining whether it should receive a payment.

The payment standard is defined as "the amount from which income 'available for basic needs' is subtracted to determine the amount of assistance to which a family is entitled." [27] Income available for basic needs is income less all permitted deductions, including the $30 and one-third earnings disregard. The State may pay all or part of the difference between the payment standard and income available for basic needs.

If the full standard is higher than the payment standard, which is the case when a ratable reduction is applied to the cost standard, a family which is eligible according to the full standard may not receive any payment. This will occur when the family's income less disregards except the $30 and one-third disregard is less than the full standard but its income less all disregards is greater than the payment standard. A State may therefore update the full cost standard by the required amount but deny payments to some families whose incomes are below the full standard. But if eligibility is given a more reasonable definition, that a family is eligible if it receives a payment, then such a State has not updated its eligibility standard and is not complying with the *Rosado* decision.

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[26] "OAA and AFDC: Standards for Basic Needs for Specified Types of Assistance Groups, March 1971," National Center for Social Statistics Report D-2 (March 1971), Department of Health, Education, and Welfare.

[27] Ibid.

The legality of a reduced standard came before the Supreme Court in *Jefferson* v. *Hackney*, decided in May 1972. Three more appointees of President Nixon had joined the court since the *Rosado* decision. The Court held that a reduced standard was consistent with section 402 (a) (23). In the decision, Justice Rehnquist wrote that the Court was unconvinced by the argument made in *Rosado* that, if the legislation is to have any meaning, the effect of updating cost standards is to increase the number of eligible families. "The cost of living increase that Congress mandated would, of course, generally tend to increase eligibility, but there is nothing in the legislative history indicating that this was part of the statutory purpose * * *. The Court [in *Rosado*] mentioned widened eligibility simply as one of several possible effects that might follow from the statute as so construed." [28] Justice Rehnquist wrote that the purpose of section 402(a) (23) stated in *Rosado* was to require the State to "* * * lay bare the extent to which their programs fall short of fulfilling actual need * * * and * * * to prod the States to apportion their payments on a more equitable basis." [29] A ratably reduced standard, he argued, both exposes the level of unmet need and apportions the limited welfare benefits more equitably than the former system of maximum grants. But, as the dissent pointed out, a State which increases its cost standard and then determines both payments and eligibility on the basis of a reduced standard has done nothing more than a "meaningless exercise in bookkeeping." [30]

The history of section 402(a) (23) is an excellent example of Handler and Hollingsworth's thesis that "the top-level decisionmakers delegate authority as the principal technique for avoiding the political risks of resolving these conflicts." [31] Handler and Hollingsworth illustrate how authority for making welfare policy is decentralized from Congress to the States and from the States to the localities. Although Congress desired some increase in cost standards in 1967, it was unwilling to take the responsibility for increasing welfare costs. Nor would the Supreme Court, faced with the ambiguous legislative history of the bill, take the initiative in forcing the States to increase benefit levels. After admitting that the language of the amendment was vague, it took a position in *Rosado* which would have the least effect on the States, given that "courts should construe all legislative enactments to give them some meaning." [32] In *Jefferson* v. *Hackney*, the Court said that the updating requirement does not force the States to increase either benefit levels or eligibility standards to adjust for increases in the cost of living. The result is that any increases in payments which have occurred have been made voluntarily by the States.

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[28] 406 U.S. 535, 543–544 and footnote.
[29] *Ibid.*, 542.
[30] *Ibid.*, 567.
[31] Handler and Hollingsworth, The "Deserving Poor," p. 16.
[32] 397, U.S. 397, 415.

ACTUAL CHANGES IN COST STANDARDS AND BREAK-EVEN POINTS

Although the updating requirement was contravened, the AFDC benefit schedule was significantly liberalized between 1967 and 1971. Some States did increase their cost standards without instituting methods to limit payments, and all States with maximums increased them. The disregard of $30 of earnings and one-third of the remainder also increased benefits considerably for families with earnings. The actual changes in the cost standards and in the methods used by the individual States to limit payments are presented here. The changes in the income levels at which families become eligible and ineligible for AFDC are then calculated.

Unfortunately, the information presented here is not completely accurate. The data on cost standards and on methods of limiting payments were obtained by HEW, but may not be completely accurate because HEW does not always interpret the States' reports correctly, because the States' practice may not be what they report, and because they might not report all the relevant procedural "details." Furthermore, the data published on cost standards do not always refer to the same month as the data published on methods of limiting payments, and the two sets of data are not always consistent with each other. This means that it is difficult to obtain a complete picture of the system at any single moment in time. The assumptions involved in estimating the income levels at which families become eligible and ineligible will be discussed below.

The changes in States' cost standards and in their methods of limiting payments are shown in table 1. Every State increased its cost standard, although the magnitude of this response varied considerably. The "full standard" for a family of four in July 1971 was higher than the "cost standard" in January 1967 in all States. The increase ranged from $6 in Montana to $146 in Oregon, and from 2 percent in Montana to 80 percent in Maryland. The average of the standards, not weighted by the number of welfare recipients or poor people in the State, was $214 in 1967 and rose to $283 in 1971 or by 33 percent. There was no relationship between the level of a State's standard in 1967 and the dollar increase in the standard between 1967 and 1971. States with low standards in 1967 increased them by no more or less, in general, than States with high standards.

TABLE 1.—*AFDC cost standards for the basic needs of a family of four and methods of limiting payments, 1967 and 1971*

	1967					1971				
	Cost standard for basic needs [1]	Reduced standard	Maximum payment	Percentage reduction of payment	Largest amount paid for basic needs	Full cost standard for basic needs [1]	Reduced standard	Maximum payment	Percentage reduction of payment	Largest amount paid for basic needs
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Alabama	$177		$90	50.0	$89	$232	$81	$110		$81
Alaska	255		140		140	400		[2] 300		300
Arizona	232		134		134	256			65.0	167
Arkansas	174		85		85	229		106		106
California	220		221		220	274		261		261
Colorado	216	$162			162	242		250		242
Connecticut	257				257	327				327
Delaware	236		149		149	287			60.0	172
District of Columbia	182				182	318	239			239
Florida	196		78		78	223			60.0	134
Georgia	188		125		125	227		149	72.8	149
Hawaii	220				220	271				271
Idaho	212				212	272	241			241
Illinois	181				181	272				272
Indiana	271		150		150	363		175		175
Iowa	192			95.0	182	300			81.0	243
Kansas	234				234	335	321			321
Kentucky	190		[3] 180/220	86.5	164	234	(4)	[3] 220/270		[4] 171
Louisiana	162		116		116	204	104		51.0	104
Maine	254		137		137	349		152		152
Maryland	172		250		172	311	200			200
Massachusetts	250				250	349				349
Michigan	223				223	350				350
Minnesota	215				215	334				334
Mississippi	194		50	27.0	50	277		60	40.0	60
Missouri	225		114		114	303		130		130
Montana	219				219	225	206			206

TABLE 2.—*AFDC monthly entry and exit incomes for a family of four, 1967 and 1971*

	Entry and exit income,[1,2] January 1967	Entry income,[2,3] July 1971	Exit income,[2,3] July 1971
Alabama	$237	$292	$242
Alaska	315	460	720
Arizona	292	[4] 321	[4] 512
Arkansas	[5] 234	289	464
California	280	334	531
Colorado	276	302	483
Connecticut	317	387	610
Delaware	[4] 301	[4] 352	[4] 558
District of Columbia	242	[4] 383	[4] 486
Florida	256	283	454
Georgia	[4] 253	287	460
Hawaii	[4] 285	[4] 336	[4] 534
Idaho	[4] 277	[4] 337	[4] 489
Illinois	241	332	528
Indiana	[4] 336	[4] 428	[4] 672
Iowa	[4] 257	360	570
Kansas	294	395	602
Kentucky	250	294	471
Louisiana	222	264	276
Maine	314	409	644
Maryland	232	371	420
Massachusetts	310	409	644
Michigan	283	410	645
Minnesota	275	394	621
Mississippi	254	337	536
Missouri	[4] 290	[4] 368	[4] 582
Montana	279	285	429
Nebraska	337	[4] 412	[4] 648
Nevada	[4] 327	[4] 385	[4] 392
New Hampshire	264	354	561
New Jersey	340	384	606
New Mexico	253	263	424
New York	322	396	624
North Carolina	208	244	358
North Dakota	311	360	570
Ohio	292	318	420
Oklahoma	223	282	404
Oregon	263	409	538
Pennsylvania	257	373	590
Rhode Island	285	323	514
South Carolina	216	258	417
South Dakota	[4] 313	360	525
Tennessee	258	277	446
Texas	224	257	342
Utah	245	380	447
Vermont	270	387	610
Virginia	255	339	512
Washington	269	346	549
West Virginia	283	325	327
Wisconsin	278	363	531
Wyoming	[4] 305	343	510

See footnotes, p. 90.

[1] If Y_E is earned income, Y_U is unearned income, and D_{67} are the deductions from income permitted in 1967 a family receives AFDC if

$$Y_E+Y_U-D_{67}< \text{cost standard}.$$

Entry and exit incomes are the same:

$$Y_{EN}=Y_{EX}= \text{cost standard} +D_{67}.$$

The cost standard used in the calculations is from table 1, column 1. D_{67} is assumed to equal $60 plus the disregards given in the footnotes here.

[2] These figures all assume that allowable work expenses are $60 per month on average. In fact, average work expense figures would vary widely among States due to different State policies. Also, the 1971 amounts would tend to be higher than the 1967 amounts due to inflation and due to increases in the social security payroll tax which is an allowable expense.

[3] If Y_E is earned income, Y_U is unearned income, and D_{71} are the deductions permitted in 1971 other than the $30 and one-third disregard, a family not already receiving AFDC will become eligible when

$$Y_E+Y_U-D_{71}< \text{full cost standard}.$$

The entry income, Y_{EN}, is therefore

$$Y_{EN}= \text{full cost standard} +D_{71}.$$

Eligible families can disregard $30 of earnings and one-third of the remainder in computing their payment. The payment is determined by comparing income less all deductions to the payment standard:

$$\text{payment} = \text{payment standard} -[Y_E-30-\tfrac{1}{3}(Y_E-30)+Y_U-D_{71}].$$

The break-even or exit point, Y_{EX}, is where

$$O=\text{payment standard}-[Y_E-30-\tfrac{1}{3}(Y_E-30)+Y_U-D_{71}],$$

or where

$$Y_{EX}=\tfrac{2}{3}Y_E+Y_U=\text{payment standard}+D_{71}+20.$$

The entry and exit incomes are unaffected if the family is paid a percent of the difference between the payment standard and

$$[Y_E-30-\tfrac{1}{3}(Y_E-30)+Y_U-D_{71}],$$

or if the State places a maximum on the payment a family can receive. The full cost standard used in the calculations is from table 1, col. 6. The payment standard is the lesser of the full cost standard and the reduced standard, col. 7. D_{71} is assumed to equal $60 plus the disregards given in the footnotes here. When deductions are assumed to equal $60, all families who are "eligible" according to the full standard actually receive a payment except in Alabama. For the sake of simplicity, unearned income is assumed to be zero and all income is assumed to be earned by adults.

[4] $5 of income, chosen at the option of the State, was deducted from income in computing the entry and exit incomes.

[5] $3 of income, chosen at the option of the State, was deducted from income in computing the entry and exit incomes.

In 1971, the entry and exit incomes were no longer equal due to the introduction of the $30 and one-third rule and the use by some States of a reduced standard. According to the rule, a family not already receiving AFDC is eligible if its income net of disregards except the $30 and one-third disregard is below the full cost standard. If it is eligible, its payment is determined by comparing income less all deductions to the payment standard. As its income increases, it will remain in the program until its income net of all disregards is as great as the payment standard. The entry income is therefore a function of the full standard and deductions except the $30 and one-third disregard, while the exit income is a function of the payment standard and all deductions.

The entry and exit points for an individual family depend on the amount of deductions from income which it obtains. The greater these deductions are, the higher will be the level of total income at which it becomes eligible and ineligible for the program. In table 2, deductions are assumed to equal $60, which is approximately the average amount of work expenses deducted by AFDC recipients with earnings in 1971. This does not include deductions for child care and deductions for other purposes, so the $60 figure is a conservative estimate.[33] Families are assumed to have no unearned income.[34]

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[33] Actual average work expense figures would vary widely by State due to different policies and would be higher in 1971 than in 1967.

[34] If a family has unearned income, the entry and exit points will be lower than those shown in table 2.

Nebraska	277		170		170	347		192		192
Nevada	262		124		124	320	176			176
New Hampshire	204				204	294				294
New Jersey	280				280	324		470		324
New Mexico	193		190	95.0	183	203		200	88.0	179
New York	262				262	336	([4])			302
North Carolina	148				148	184	159			159
North Dakota	251				251	300				300
Ohio	232				232	258	200			200
Oklahoma	163		175		163	222	189	320	85.0	189
Oregon	203				203	349	279			279
Pennsylvania	197				197	313				302
Rhode Island	225				225	263				262
South Carolina	156		87		87	198			52.0	103
South Dakota	248	223			223	300	270			270
Tennessee	198		120		120	217		127		127
Texas	164		114		114	197	148			148
Utah	185		185		185	320	218	218		218
Vermont	210				210	327				327
Virginia	195	176	215		176	279	261	305		261
Washington	209		325		209	286				[5] 274
West Virginia	223	145	165		145	265	138	182		138
Wisconsin	218				218	303	274			274
Wyoming	240		200		200	283	260	227		227

[1] Many States' standards include an amount for rent as paid up to maximum amounts which may vary within States. The standards shown here generally include the States' highest rent maximums.

[2] 1 child is assumed to be in each of the following age categories: 1 to 4, 5 to 12, 13 to 17.

[3] The higher figure applies in industrial counties and the lower in all other counties.

[4] These States are shown as using a reduced standard in "State Maximums and Other Methods of Limiting Money Payments . . ." but not in "Public Assistance Programs: Standards for Basic Needs . . ." According to the former, Kentucky had a reduced standard of 73.1 percent of the full standard and New York had a reduced standard of 90 percent of the full standard. New York's reduction actually applies only to the non-rent portion of the standard.

[5] The payment is reduced by a flat amount of $12.

SOURCES

Col. 1: "Aid to families with dependent children: Percent that amount paid for basic needs for a family consisting of father, mother, and 2 children represents of total monthly cost standard for basic needs of such family, by State, January 1967," revised August 1967, Department of Health, Education, and Welfare.

Cols. 2, 3, and 4: "Money Payments to Recipients of Special Types of Public Assistance, October 1967," National Center for Social Statistics report D-4 (October 1967), Department of Health, Education, and Welfare.

Col. 5: The lesser of cols. 1, 2, or 3, or col. 4 multiplied by col. 1.

Cols. 6 and 7: "Public Assistance Programs: Standards for Basic Needs, July 1971," National Center for Social Statistics report D-2 (July 1971), table 6. The payment standard given in col. 2 of table 6 is used as the reduced standard here.

Cols. 8 and 9: "State Maximums and Other Methods of Limiting Money Payments to Recipients of the Special Types of Public Assistance, July 1971," National Center for Social Statistics report D-3 (July 1971).

Col. 10: The lesser of cols. 6, 7, or 8, or col. 9 multiplied by col. 6.

As of July 1971, all of the States with maximums in 1967 had updated them. Nine States with maximums eliminated them and two States introduced them. The increase in the average maximum of States with maximums in both years, also unweighted, was $40 or 27 percent, considerably less than the increase in the full standard. Increasing the maximum costs a State money in higher payments while, as shown above, increasing the full standard does not necessarily cost more.

The practice of paying only a percentage of the difference between the cost standard and countable income increased in this period. Five States applied a percentage reduction in 1967 compared with 10 in 1971.

As the history of the implementation of section 402(a)(23) indicates, the increase in the full standard overstates the increase in the standard used to determine payments. Many States responded to the updating requirement by applying a ratable reduction to their standard, and this method of avoiding the updating requirement has become widespread. The number of States applying a ratable reduction to their standard grew from four in 1967 to 21 in January 1971. The amount of the reduction varies from State to State. In Alabama, which applies the largest percentage reduction, the reduced standard was 35 percent of the full standard. In Kansas, which reduces the standard least of any State with a reduction, the reduced standard was 96 percent of the full standard. In eight States, the reduced standard was considerably below the 1967 cost standard. In the other 13 States with reduced standards, the reduced standard averaged $42, or 21 percent more than the 1967 cost standard. In States which did not reduce their standards, the standard in 1971 was $70, or 32 percent, more than the standard in 1967.

States which have high full standards tend to use the full standard, while those with low standards tend to reduce their standards. Those States with the least generous programs, whose cost standards most needed to be increased, were the States which responded to the updating requirement by ratably reducing their standards.

Table 2 shows the changes between 1967 and 1971 in the incomes at which families begin to be eligible for AFDC and in the break-even points where their payments become zero. In 1967, the "entry" and "exit" incomes were identical; a family became eligible if its income net of work expenses and the other permitted deductions fell below the cost standard and became ineligible if its net income rose above the cost standard.

lion. Massachusetts, Minnesota, and Vermont received over 50 percent more than they would have under the old formula; Connecticut, Idaho, Iowa, New York, Pennsylvania, Virginia, North Dakota, and South Dakota received over 25 percent more than they would have received. In some States, choosing the new formula meant increased Federal grants for AFDC but reduced Federal grants for the other three public assistance categories. But even if the net increase in Federal grants were small, the higher matching rate for AFDC would lower the cost to the States of increasing AFDC benefits relative to similar increases for the other categories.

This change in the matching formula has gone almost unnoticed in the recent debate over welfare reform. States asking for fiscal relief probably do not want to publicize the fact that the Federal Government has already increased grants to many of them; nor is the Federal Government anxious to argue that it has given some States a windfall gain and reduced the cost of their giving an additional dollar of welfare. HEW should be requested to provide a detailed description of the additional Federal grants resulting from the change in the matching formula. If this were done, one could then attempt to estimate how the additional grants affected the welfare rolls. The rough data presented here suggest that the effect of the change might have been significant.

Foster Care

In 1961, States were given the option of extending AFDC to children who had been living in families receiving aid but who had been taken out of their homes to protect their well-being. Aid could be given to them if they lived in foster homes or institutions. The Federal Government would match the States payments to foster children on the same basis as payments made to other recipients. The 1967 amendments made it mandatory that the States extend AFDC to children in foster care. It changed the eligibility requirements to include children removed from families which would have received AFDC if they had applied for it. It also provided that the Federal Government match the States payments up to $100 a month per child.

In mid-1968, only 12,000 children in foster care were receiving AFDC. By the end of 1971, the number had grown to 70,000. While this is, of course, a large increase, it represents only a small share of the total growth in the AFDC caseload.

Emergency Assistance

Although some families receive AFDC for only a short period of time when a crisis occurs, the process of determining eligibility and authorizing payments often takes too long to help people in need of immediate assistance. The 1967 amendments provided for Federal financial sharing in emergency assistance given to needy families of the same general type as are eligible for AFDC. Aid can only be given when a child is "without available resources [and] the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home." Presumably, a less rigorous procedure is used to determine eligibility, and payments are made quickly. In order to prevent abuse of the program, it carries the limitation that no family can receive aid for more than 30 days in any 12 month period. At the end of 1971, States reported 13,300 families receiving emergency assistance. New York City did not report data on emergency assistance, so that 13,300 is an understatement of the actual number of recipients. Families receiving emergency assistance are not included in the count of families receiving AFDC, however, so that they are not a factor in explaining the rapid growth in the AFDC caseload.

II. Changes in the Administration of AFDC

The laws and regulations concerning eligibility for Public Assistance and the size of the assistance payment are not the sole determinants of who receives money and how much they receive. The administration of these rules is also important, and probably more important than in other income maintenance programs. Whether a given set of rules are strictly or loosely interpreted and enforced can make a significant difference in the welfare caseload and payment levels.

Many changes have occurred in the administration of AFDC, and only some of them will be discussed here. The focus will be on those changes which may have increased or decreased the accuracy with which eligibility and payments are determined. This involves an examination of administrative changes which have affected the correctness with which caseworkers determine eligibility and payments and the commitment of fraud by recipients.

Separation of Money Payments and Social Services

Traditionally, caseworkers in welfare agencies have administered money payments and provided social services as a single function. As the caseworker inquired about the family's financial situation, she would learn about its problems and attempt to help solve some of them. In providing social services, caseworkers would often gain additional information about the eligibility of the family and factors which could affect the amount of its payment.

With the increased interest of professional social workers in working with welfare recipients and with the amendments providing the funds to pay them, the combined administration of payments and services began to appear undesirable. Trained social workers want to provide services, not compute welfare benefits, and the need to make welfare agencies attractive to them led HEW to favor separating the administration of payments and services. Social workers also felt that their effectiveness would be reduced if recipients believed that information given to them could be used to reduce their payments or remove them from the rolls.

During the late 1960's, HEW encouraged separation by funding numerous demonstration projects. Although separation was voluntary, HEW reported that in April 1971, 16 States had completely separated the provision of services and payments and an additional 14 had achieved "substantial" separation. Only three States had reported no progress in this organizational change.[38] However, it is difficult to

[38] "Service to AFDC Families," Second Annual Report of the U.S. Department of Health, Education, and Welfare to the Congress on Services to Families Receiving AFDC, July 1971, DHEW Publication No. (SRS) 72-23002, pp. 9-10.

In States with a reduced standard which is much less than the full standard, a family may be "eligible" but may not qualify for a payment. As described above, this occurs if its income net of deductions except the $30 and one-third earnings disregard is below the full cost standard but its income net of all deductions is above the payment standard. If deductions are assumed to equal $60, Alabama is the only State where a family could be "eligible" but not receive a payment. This can be seen in table 2, where the exit income in Alabama is lower than the entry income.

Exit points increased dramatically between 1967 and 1971, as is shown in table 2. The average of the States' exit incomes for a family of four increased by 87 percent, and the exit income increased by 100 percent or more in 19 States. A large part of this increase is due to the $30 and one-third disregard. The entry points, which are unaffected by this disregard, increased considerably less; the average of the States' entry points rose by only 26 percent.

Families who are "poor" according to the definition of poverty developed by the Federal Government were more likely to be eligible for AFDC in 1971 than in 1967. In 1967, the poverty line for a family of four was $3,388. The entry and exit incomes in table 2, multiplied by 12 to put them on an annual basis, were higher than the poverty line in 20 States. In 1971, the entry point, on an annual basis, was higher than the poverty line of $4,137 in 26 States. The exit point was higher than the poverty line in every State except Alabama, Louisiana, Texas, and West Virginia.[35]

The increase in the entry and exit incomes between 1967 and 1971 has undoubtedly been one of the major factors increasing the AFDC caseload. Families who were ineligible in 1967 because their incomes were too high became eligible. Families who would have worked their way off welfare were permitted to disregard some of their earnings and remain on the program. The $30 and one-third disregard was intended to encourage recipients to work and thereby reduce their need for welfare. But by raising the exit incomes, it did more to increase the rolls than to decrease them.

Change in the Federal Matching Formula

The Federal Government grants money to the States to help them pay for public assistance. In a section of the medicaid amendments of 1965 which received almost no publicity, the Federal matching formula was increased for a sizable number of the States. States were given the option of being paid according to the existing cash assistance matching formulas or according to the new matching formula for the medicaid program. Under the AFDC formula, the Federal Government pays five-sixths of AFDC monthly payments up to $18 multiplied times the number of recipients and a variable proportion of the remaining payments up to $32 times the number of recipients. The States bear the entire cost of average monthly payments in excess of $32. The variable proportion, called the "Federal percentage," for a State equals

$$1-0.5\left(\frac{\text{per capita income of the State}}{\text{per capita income of the U.S.}}\right)^2$$

[35] This would not necessarily hold for families with unearned income, however.

but can be more than 65 percent and no less than 50 percent. Poorer States are thereby matched at a greater rate than richer ones.

The 1965 amendments gave States the option of being paid the "Federal medical percentage" on all public assistance payments without any limit. The Federal medical percentage of a State equals

$$1-0.45\left(\frac{\text{per capita income of the State}}{\text{per capita income of the U.S.}}\right)^2$$

but is constrained to be between 50 and 83 percent. States can choose whether they want to be paid the Federal medical percentage on all their public assistance payments combined or according to the separate formulas for the four assistance programs. The new formula is advantageous to some rich State and to some poor ones, depending on whether the single medical percentage applied to all payments yields them more than the combination of a generally higher matching rate on the first $18 and a generally lower rate on the next $14.

By December 1968, 12 States had substituted the Federal medical percentage formula for the older formulas. The increase in Federal grants resulting from this change was sizable. In this month, Federal grants for AFDC were $17.1 million greater than if they had been calculated under the older formula, or $205 million on an annual basis.[36] This difference is quite significant considering that total Federal grants for AFDC were $1,404 million in calendar year 1968. New York accounted for over two-thirds of the increase. The difference in grants to New York for AFDC under the two formulas was $12.6 million in December 1968 or $151 million on an annual basis. In comparison, total grants to New York for AFDC were $354 million in 1968.

By June 1970, 28 States had chosen to use the Federal medical percentage formula to compute their public assistance grants. Although HEW does not publish the information required to estimate accurately the additional Federal grants resulting from adopting the new formula, a rough estimate is that States received an additional $300 million in grants for AFDC in fiscal year 1970, or 25 percent more than they would have under the old formula.[37] New York received the greatest share of the increased grants, about $110 million or 37 percent. Pennsylvania received roughly an additional $45 million, Massachusetts an additional $35 million, and California an additional $15 mil-

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[36] "Alternate Method of Computing the Federal Share of Money Payments to Recipients of Public Assistance," National Center for Social Statistics Report H–3 (December 1968) Department of Health, Education, and Welfare.

[37] Federal grants for AFDC which would have been made under the old formula (that is, five-sixths of the first $18 of the average payment per recipient and the Federal percentage of the next $14) were estimated as the product of the average number of recipients per month in fiscal year 1970, the average Federal grant per recipient per month, and the number of months in the year. The number of recipients excludes children receiving foster care because payments to these children are matched at a higher rate and are impossible to calculate from data published by HEW. Data on the number of recipients and average AFDC payments are from the Social Security Bulletin. Data on the number of foster children are from the National Center for Social Statistics Report A–2.

Data on the actual Federal grants to the States under the new formula were obtained from the Division of Finance, Social and Rehabilitation Service, Department of Health, Education, and Welfare. Grants equal the "unadjusted" Federal share of assistance payments less the Federal share of payments for home repairs, emergency assistance, and foster care.

interpret this data because, in the absence of a Federal regulation, the definition of "separation" varied from State to State.[39]

It is difficult to determine whether separation contributed to the increase in the caseload, but it probably had some effect. If it is true that some of the "services" provided by caseworkers were, in fact, investigations of recipients' eligibility, then separation resulted in less time being devoted to eligibility determination. If fraud is prevalent, then more people received benefits who were not entitled to them. But, if in the future separation succeeds in making services more effective, the long run effect of separation should be to reduce the caseload.

The "Simplified Method"

Determining eligibility for AFDC and the amount of the payment has always been complicated and time-consuming. In the early years of the program, payments were determined by asking each family how much it spent for food, clothing, housing, and other items. The discretion given the caseworker and the resulting inequity in treatment led HEW, in 1947, to require the States to establish cost standards for the basic consumption items. While discretion and complexity remain, the development of cost standards simplified the process of computing benefits considerably. Fewer changes have been made in the procedures for obtaining information about applicants and recipients. Until the adoption by some States of the "simplified method," which will be described here, information was obtained by visiting the home of each applicant and attempting to verify the information they provided. But the rapid increase in the caseload in the late 1960's and the consequent pressures to control costs led welfare administrators to question whether this highly individualized treatment was worth the possible savings in preventing error and fraud.

The regulation describing the "simplified method" of determining eligibility was published in the Federal Register in January 1969:

> The simplified method means an organized method by which the agency accepts the statement of the applicant for, or recipient of, assistance about facts that are within his knowledge and competence * * * as a basis for decisions regarding his eligibility and extent of entitlement. The method includes use of a simplified form for application and redetermination which will provide for the information necessary for the determination of eligibility and extent of entitlement under the State plan * * *. When under the simplified method, statements of the applicant or recipient are incomplete, unclear, or inconsistent, or where other circumstances in the particular case would indicate to a prudent person that further inquiry should be made, and the individual cannot clarify the situation, the State agency will be required to obtain additional substantiation or verification. In such instances, verification is obtained from the individual or the agency's records or from public records, or, with the individual's knowledge and consent, from another source.

The regulation required that each State test the method and that HEW determine whether the results of the test warrant statewide implementation. The earliest effective date for statewide implemen-

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[39] On February 1, 1972, HEW proposed a regulation in the Federal Register requiring States to separate services from assistance payments. Separation is defined as "* * * the administration and operation of the services function independently from the administration and operation of the financial assistance function." Coordination of the two functions is provided by the requirement that a single person at the State level be responsible for both.

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tation, following favorable test results, was April 1, 1970 for AFDC and earlier for the adult programs.

In October 1969, mandatory statewide implementation of the simplified method in Old Age Assistance and AFDC was postponed by 3 months in order to provide a longer testing period. Regulations issued in May 1970, postponed statewide mandatory use of the simplified method in the adult categories until July 1, 1971. The effective date of use in AFDC and medicaid was postponed indefinitely until the Secretary of HEW determines that tests of the method support its overall effectiveness on a permanent basis.

In December 1971, the National Evaluation Committee on the Simplified Method of Determining Eligibility in Public Assistance recommended that the simplified method be required for AFDC. They found that its administrative cost was lower than the conventional method by a significant amount.[40] But an internal HEW committee has concluded that the simplified method should not be mandated for AFDC, and the recommendations of the National Evaluation Committee have not been implemented. The States which used the simplified method in AFDC do so, therefore, voluntarily.

INTERPRETATION OF THE REGULATION

The published regulation does not specify many details of the simplified method, and leaves it open to various interpretations. Currently, HEW is attempting to define this simplified method in a way that will preserve its integrity but will provide safeguards against fraud by recipients. Current interpretation of the regulation puts considerable emphasis on protecting the program from both caseworker and recipient error and recipient fraud.

According to an HEW manual, the distinguishing features of the method are that the statements of the applicant or recipient are to be accepted as true and are to be obtained by an application form, not a personal interview. Interviews can be used to assist people, upon request, to complete the form and to provide information about the program, but they should be conducted "in an atmosphere of trust as distinguished from the investigatory interview." [41]

Although by this definition the simplified method appears similar to the method for determining income tax liability, HEW permits exceptions which can result in significant differences. Interviews to obtain information can be used when the statements in the form are incomplete, unclear, or inconsistent or where other circumstances indicate to a "prudent person" that further inquiry is needed. The manual recognizes the difficulty of specifying exactly what is meant by unclear and inconsistent and what circumstances would appear questionable to a "prudent person." While it gives some examples, such as "The in-

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[40] "Report of the National Evaluation Committee on the Simplified Method of Determining Eligibility in Public Assistance," Department of Health, Education, and Welfare, December 1971. The Federal regulations of January 1969, required that the Secretary of HEW appoint a committee of citizens to evaluate the method periodically and recommended changes which would improve it.

[41] Assistance Payments Administration Financial Assistance Manual, pt. 3; Social and Rehabilitation Service, Department of Health, Education, and Welfare, p. 4.

formation given * * * appears to be contradictory" or "* * * the individual * * * appears to be mentally confused," a great deal of discretion is left to the caseworker.[42]

If sufficient information cannot be obtained by an interview with the applicant or recipient, the agency must obtain information from other sources. While the agency must obtain permission of the family before seeking this information, assistance can be denied or terminated if this permission is not granted.[43]

While it is understandable that welfare administrators, after decades of determining eligibility through investigations, would be reluctant to relinquish all authority to use outside sources of information, the "prudent person" policy is vague enough to destroy the intent of the simplified method. Their reluctance is also reflected in the requirement that the application form contain conspicuous notice of the penalties for fraud and that a case be referred to the appropriate law enforcement official if there is evidence that fraud has been committed. The regulation also requires that the States significantly revise their "quality control" system, which is discussed below.

USE AND EFFECT OF THE SIMPLIFIED METHOD

Detailed information on the extent to which the simplified method is being used in AFDC is not available. But according to information given to HEW by the regional public assistance offices, the simplified method was being used statewide by 22 States in January 1971, and on a limited basis in 15 States. At the end of 1971, 28 States used it statewide and 13 on a limited basis.[44] However, footnotes attached to the latter set of data indicate that these figures exaggerate the actual implementation of the new method. Nevada, for example, was listed as using the simplified method statewide, but there is "some interviewing and routine investigations." Minnesota was also listed as using it statewide, but there is a "routine interview." Several States using it statewide had exceeded the quality control tolerance levels and returned to the conventional method to some degree: Florida was visiting all cases; Montana uses the "prudent person" policy in all cases; Utah was verifying selected eligibility requirements; Maryland, Delaware, West Virginia, and the District of Columbia used a structured interview and/or other followup measures; and several other States were deviating from a strict definition of the simplified method in some manner. New Mexico, which was listed as using the method on a limited basis, was continuing to exceed the quality control tolerances even though it verifies information, and plans were being made to discontinue use of the method.

A study by the General Accounting Office (GAO) confirms that State reports on adoption of the simplified method may overstate its actual use. After examining welfare agencies in New York City, Los Angeles County, and the Kansas City area, they conclude that, "Generally welfare centers which were supposedly using the HEW simplified method were, in fact, using a modified version of that method. We

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[42] Ibid., pp. 8–9.

[43] Ibid., p. 7.

[44] Unpublished data received from the Department of Health, Education, and Welfare.

found that applicants for public assistance routinely were being interviewed to secure information regarding their eligibility and that certain eligibility information routinely was being verified." [45] On the other hand, centers supposedly using the traditional method of eligibility determination were not following it closely. Welfare centers using the traditional method generally made home visits but did not follow normal investigative techniques for obtaining collateral information. The use of collateral sources of information appeared to be decreasing because of the large increase in the caseload relative to the number of caseworkers and HEW regulations requiring eligibility decisions to be made within 30 days of the application for assistance. In short, "there was not much difference between the extent of verification of information at welfare centers using a simplified method and those using the traditional method of determining eligibility." [46] The agencies' failure to adopt a true simplified method was not due to any technical difficulties but to a belief that it does not constitute appropriate administration. "Without exception, the directors of the centers using simplified methods stated that the centers should not rely completely on applicants' statements * * *. [A]lthough they believed that most applicants are honest, eligibility workers have an obligation to assure themselves that their decisions are based on a reasonable amount of evidence that applicants qualify for assistance." [47]

The GAO study attempted to determine the effect of the simplified method on the AFDC caseload. Welfare centers using the simplified method were compared with those using the traditional method in the three cities listed above. The results do not indicate that a "modified" simplified method leads to a much larger caseload than a traditional method: (1) Centers experienced a greater rate of increase in recipients when they first switched to the simplified method and when they first separated money payments and services, but the increase fell closer to the rate of the centers using the traditional method as caseworkers became experienced with the new systems. (2) The percentage of applications which are rejected tends to fall after the introduction of the simplified method and the separation of services, and to level off or rise after caseworkers become familiar with the new methods. Rejection rates do appear lower in centers which use more strictly defined simplified methods. (3) The number of cases closed did not appear to be affected by the use of the simplified method. Welfare officials reported that cases are seldom closed on the basis of information obtained at the time of the periodic redetermination of eligibility. Cases are usually closed when the recipient requests that the case be closed or when data "voluntarily supplied by informants" indicate that the family is no longer eligible.

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[45] "Comparison of the Simplified and Traditional Methods of Determining Eligibility for Aid to Families with Dependent Children," Report to the Committee on Finance, U.S. Senate, by the Comptroller General of the United States, published by the Social and Rehabilitation Service, Department of Health, Education, and Welfare, July 14, 1971, p. 11.

[46] Ibid., p. 2.

[47] Ibid., p. 62.

Quality Control

"Quality control" is the name given to the systematic review of the accuracy or quality of caseworkers' decisions on eligibility and payment levels. According to HEW, quality control is not for the purpose of identifying fraud by individual families in order to prosecute them. "It is concerned with individual case errors in the case sample only insofar as they reflect problems in overall agency performance that require remedial treatment." [48] As quality control in industry is designed to maintain the quality of the product being produced, so quality control in welfare is supposed to maintain and improve the administration of the program. Separate procedures have been developed to deal with fraud, which will be discussed later.

States were first encouraged to have a quality control program in 1964, after a nationwide review of the eligibility of AFDC families found that 5.4 percent of them were ineligible.[49] For the remainder of the 1960's, quality control consisted primarily of checking a sample of the caseworkers' records to determine whether the correct decisions had been made on the basis of information contained in the record. Recipients were generally not reinterviewed to check the accuracy of information in the record.

At the end of the decade it became clear that quality control was not detecting inaccuracies in determinations of eligibility and payments. A quality control study in New York City in 1969 found an ineligibility rate of 1.2 percent, but the General Accounting Office reinterpreted the data and found a rate of 10.7 percent.[50] As a result of this and other studies, HEW revised the quality control system that States were required to use. Adoption of the new system was required by October 1970.

The adoption of the simplified method of eligibility determination by some States was an added motivation for an improved quality control system. When the simplified method is introduced, quality control becomes important not only as a way to reduce fraud but as part of a process to improve the simplified method itself. It is unfortunate that both new systems were introduced in many States almost simultaneously. Welfare administrators were already overburdened by the huge increase in the caseload, and were not able to devote adequate staff to quality control. The result, as will be discussed below, is that the quality control system was largely inoperative at a time when the simplified method was being introduced in many States and when quality control was therefore most needed.

DESCRIPTION OF QUALITY CONTROL

According to HEW's description of the new quality control system, it consists not only of analysis of case records but of investigations of the accuracy of information provided by applicants and recipients.

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[48] "Quality Control in Public Assistance," Assistance Payments Administration. Department of Health, Education, and Welfare, July 1970, revised, p. I–1.

[49] Paul Vernier and Robert H. Mugge, "Findings of the AFDC Eligibility Review," Welfare in Review, October 1963, vol. 1, No. 4.

[50] "Monitoring of Special Review of Aid to Families with Dependent Children in New York City, Conducted by the Department of Health, Education, and Welfare and the New York State Department of Social Services," General Accounting Office, October 17, 1969.

A sample of active cases and of negative case actions (rejections or terminations) is drawn every 6 months by the State, and a full field investigation is required for all active cases in the sample. The investigator must visit the home of the recipient for an interview. He can obtain information from the recipient's relatives, landlord, neighbors, employer, past employers, neighborhood stores, school records, probation department, motor vehicle department, the Social Security Administration, the Internal Revenue Service, the employment service, and credit bureaus. The term "investigation" is an appropriate one, as revealed by the manual on quality control prepared by HEW for the States.[51] The recipient's word is not to be accepted as true, and investigators are encouraged to utilize all these sources of information in order to discover if the recipient is hiding resources, earnings, or other factors which might make him ineligible or change his payment. Investigators should talk to recipients and analyze their behavior to obtain "leads" for further investigation. The recipient's consent for securing this information should be obtained, but if the simplified method is being used the investigator can use collateral sources even without his cooperation.

The review of terminated cases and denied applications does not require a field investigation if examination of the case record indicates that the termination or rejection was appropriate. A field investigation is only required if analysis of the case record does not substantiate the correctness of the action. In contrast to the review of active cases, which can reveal overpayments and ineligibility which are costly to the Government, the review of rejected or terminated families reveals incorrect decisions in which only the family loses. Although the quality control reviewer should notify the local agency when an error is discovered so that the agency can notify the family to reapply, quality control is clearly more concerned with saving the Government money than providing welfare to people who qualify.

The system is supposed to determine both the extent to which recipients are ineligible and assistance is erroneously denied to eligible persons, and the extent of overpayments and underpayments. HEW requires that the States keep the rates of error discovered below certain "tolerance limits." The limits are set at 3 percent for eligibility errors and 5 percent for payment errors. When the rate of error exceeds these limits, the States must take two types of remedial action. Immediate, but short run, changes in the specific factors causing the error must be made to reduce the error rates to tolerable levels. If, for example, a high error rate is caused by incomplete or inaccurate information obtained from clients under the simplified method, the entire caseload can be investigated to obtain information relating to the factors contributing to the error. That is, the simplified method can be temporarily abandoned. In the longer run, States must remove the causes of the error. In the example given here, an appropriate response would be to simplify the agency's policies or to improve the forms used in the simplified method.

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[51] The following information was obtained from "Quality Control in Public Assistance," Social and Rehabilitation Service, Department of Health, Education, and Welfare, July 1970.

IMPLEMENTATION OF THE QUALITY CONTROL SYSTEM

The General Accounting Office reviewed the operation of quality control in eight States in 1971, more than a year after States were required to implement the system.[52] The two largest States, New York and California, had not implemented the system on a statewide basis, although it was operating in New York City. The other six States had implemented the system statewide, but in varying degrees. None of the States had completed the investigations of the full sample of cases, so that the information gathered was not statistically significant. The GAO found that the investigations which were completed were inadequate in most cases, because the factors determining eligibility and payments had not been sufficiently verified.

Insufficient staff at the State, regional, and national level was a major reason why the quality control system was not fully in effect. The Secretary of HEW authorized additional personnel 5 months after the system was to be implemented, and an HEW official said that the lack of staff has meant that HEW " 'has been able to maintain only a general knowledge of Quality Control Operations in most States * * * [and] cannot speak with any certainty about the validity of [their]findings.' "[53] Although staffs have been increased since the GAO study, State staffs are still inadequate for the large effort that quality control requires.

The first release by HEW of information gathered by quality control was the results of a study in April 1971, which represented about one half of the caseload.[54] (At least 16 States, including some of the largest, had not fully implemented the system.) The study found that errors were made in determining the eligibility or payments of 28.6 percent of the AFDC families. Of families receiving AFDC, 5.6 percent were found to be ineligible. Overpayments were made to 14.6 percent of the families and averaged $44.92 a month. Underpayments were made to 9.7 percent and averaged $18.32. The welfare agency caused errors in 13.2 percent of the cases, the family in 12 percent, and both the agency and family caused errors in 3.4 percent. Most of the errors were considered to be honest mistakes. Less than 1 percent of the cases were prosecuted for fraud. The survey did not include families terminated from the AFDC rolls and families rejected by the programs. The number of families who were erroneously terminated or rejected is therefore unknown.

Although the rate of error by the agency seems high, it is inevitable in a system with restrictive eligibility requirements, asset tests, relative responsibility laws, complicated methods of limiting payments, special needs, and other administrative nightmares. Some of what HEW calls "agency error" undoubtedly results from the deliberate efforts of caseworkers. Caseworkers who are sympathetic to the plight of their clients and who recognize the restrictive, often arbitrary, nature of the rules governing eligibility and payments are under-

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[52] "Problems in Attaining Integrity in Welfare Programs," General Accounting Office, Mar. 16, 1972.

[53] Ibid., p. 41.

[54] HEW press release, January 3, 1972.

standably tempted to be more liberal than is permitted. Deliberate error by caseworkers is probably less important in causing underpayments to recipients, which were smaller and less frequent than overpayments.

Fraud

Responsibility for defining, preventing, and prosecuting fraud rested entirely with the States during the first 25 years of public assistance. In 1961, in response to press reports about fraud which HEW could neither substantiate nor refute, HEW issued guidelines for State policies and procedures with respect to fraud. These guidelines required the States to establish a policy to deal with fraud, although they did not specify the details of such a policy. States responded with a wide variety of definitions of fraud, administrative procedures, investigatory methods, and other features of fraud control. As in most other features of public assistance, particularities of each State have led to wide variation in their concern about fraud and procedures to deal with it. The extent of Federal regulation of State procedures, and the form which such regulation should take, has been at issue throughout the 1960's. The introduction of the simplified method of eligibility determination and the separation of services and money payments have raised further questions about the desirable form of fraud control.[55]

Since 1964, HEW has required the States to report each year on their methods of dealing with recipient fraud and the number of cases involving questions of fraud. They report on the total number of cases suspected of fraud, the cases referred to law enforcement officials, and the cases prosecuted. They do not report on convictions, so that it is not known how many families were legally determined to have behaved fraudulently.

The data reported in table 3, if taken at face value, suggest that fraud is not widespread in public assistance and that it is not responsible for the growth in the AFDC caseload. Only 3 percent or less of AFDC cases were suspected of fraud and less than 0.2 percent were prosecuted. The number of cases suspected of fraud declined in the 1960's, as did the cases where facts supported this suspicion. The number of cases referred to law enforcement officials rose, together with the number prosecuted. In 1971, suspected cases, referrals to law enforcement officials and prosecutions rose sharply. In part, this reflects the larger caseload. It could also result from increased actual fraud or, equally likely, greater efforts to detect fraud as the welfare explosion reached its peak.

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[55] This topic and many other administrative issues are analyzed by Sharon Galm in Issues in Welfare Administration: Welfare—an Administrative Nightmare (Studies in Public Welfare, Paper No. 5 (pt. 1), Subcommittee on Fiscal Policy, Joint Economic Committee print, December 31, 1972).

TABLE 3.—*Public assistance cases involving questions of fraud*

	Fiscal year— 1964	1967	1970	1971
Cases involving a possible question of fraud	42, 000	39, 200	33, 900	51, 024
Percent of adult cases	0. 3	0. 3	0. 2	0. 3
Percent of AFDC cases	3. 0	(1)	1. 4	1. 6
Facts sufficient to support a question of fraud	23, 100	18, 032	15, 500	22, 683
Cases referred to law enforcement officials	6, 700	7, 000	8, 600	11, 923
Cases prosecuted	2, 300	2, 600	3, 000	4, 988

1 Slightly less than 3.

SOURCES

1964 and 1967: "Developments in Dealing with Questions of Recipient Fraud in Public Assistance 1951–67," Division of State Administrative and Fiscal Standards, Social and Rehabilitation Service, Department of Health, Education, and Welfare, pp. 35 and 37.

1970 and 1971: "Disposition of Public Assistance Cases Involving Questions of Fraud," National Center for Social Statistics report E–7, fiscal years 1970 and 1971, Department of Health, Education, and Welfare.

These data, however, are not good indicators of the actual amount of fraud in public assistance. As mentioned earlier, the States are not required to report on convictions, so that all data refer to suspected fraud. Furthermore, the variation in State laws and procedures, among States and over time, make comparisons difficult. Some agencies report all cases which have been reviewed for possible overpayment as cases "involving questions of recipient fraud," while others report only those where review indicates facts which are sufficient to support a question of fraud. One agency reports only if the recipient has liquid assets and refuses to repay the assistance fraudulently received.[56] Similarly, criteria for referring a case to law enforcement officials vary from one agency to another. According to an HEW report, "State agencies generally do not refer cases if: (1) the amounts of money involved are small; (2) voluntary reimbursement or payment plans are worked out; (3) the recipient has mental or physical limitations; (4) special hardship exists; or (5) other factors make such referrals infeasible.[57] What constitutes "small" amounts of money, "mental limitations" or "special hardship" is, of course, decided by the particular agency administering the program. The decision of law enforcement officials to prosecute a case depends on considerations similar to those of the welfare agencies and varies from one jurisdiction to another.

The data on fraud also appear of questionable accuracy when they are compared to information obtained by the quality control investigations. In 1971, 1.6 percent of the AFDC caseload was reported to involve a possible question of fraud, and in about one-half of these cases

[56] "Developments in Dealing With Questions of Recipient Fraud in Public Assistance 1951–67," Division of State Administrative and Fiscal Standards, Social and Rehabilitation Service, Department of Health, Education, and Welfare.

[57] "Report on the Disposition of Public Assistance Cases Involving Questions of Fraud, Fiscal Year 1970." National Center for Social Statistics report E–7, Department of Health, Education, and Welfare.

the facts were sufficient to support a question of fraud. Quality control investigations in 1971 found that 15.4 percent of the AFDC families made some sort of an "error" in providing information to the welfare agencies. Much of this error is not fraud but unintentional mistakes made by poorly educated people who are understandably confused by the complex rules and procedures of welfare. The true proportion of this error that is deliberate is not known, but it seems unlikely that questions of fraud would account for only 5 percent of the error found by quality control, which would be the case if the data on fraud reported to HEW were accurate.

An HEW report on fraud admits that "criteria for identifying and reporting [fraud] are not as clear as could be desired."[58] The discussion above suggests that a stronger statement is probably warranted: we know almost nothing about the true extent of fraud in AFDC. This conclusion is illustrated by the dispute in 1972 between New York City and New York State officials over the level of fraud in the city. City officials estimated that 2 to 4 percent of the welfare caseload were ineligible while the State estimated that 20 to 30 percent were ineligible. With a disparity as large as this, it is difficult even to guess about the real extent of fraud.

The inadequacy of the data does not lie solely with the reporting system but with substantive issues concerning Government policy toward fraud. A relatively passive policy toward fraud leaves the AFDC program vulnerable to charges that fraud is widespread. As the dispute in New York indicates, welfare fraud can easily become a political issue and ignorance about the extent of fraud weakens public support for the program. On the other hand, the development of a clear and uniform definition of fraud and of enforcement procedures is hampered by a reluctance to make criminals out of poor people who are trying to get a few more dollars from an inadequate and inequitable welfare system. Requiring caseworkers to refer all cases of suspected fraud to law enforcement officials, regardless of special circumstances surrounding the case, eliminates a type of caseworker discretion that could be desirable. Furthermore, law enforcement agencies are often unwilling to go through lengthy and costly prosecution procedures for the small amounts of money involved in any one case. These costs of exposing and prosecuting fraud help explain the low rate of reported fraud in AFDC.

III. Judicial Decisions

The second half of the 1960's witnessed the development of a new specialty in the legal profession: welfare law. Beginning with the Office of Economic Opportunity's Legal Services program, interest in protecting welfare recipients grew and funds were made available for litigation. Restrictive welfare regulations, which for years had been used to deny benefits to poor families and to control their behavior, were tested in the courts. States which were not complying with Federal law and regulations were challenged by hitherto powerless welfare recipients. Some of the cases, such as *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), which successfully challenged dura-

[58] "Developments in Dealing With Questions of Recipient Fraud," p. 15.

tional residence requirements, have resulted in a significant liberalization of the program. Others, such as *Jefferson* v. *Hackney*, which was discussed earlier in this paper, were not successful in expanding AFDC benefits. On balance, however, the welfare litigation of the past 5 years has been an important factor contributing to the increase in the AFDC caseload. Making AFDC more equitable has meant expanding the program.

Cases which reached the U.S. Supreme Court are described briefly below. (*Rosado* v. *Wyman* is discussed earlier and is not included here.) State and district court cases have also had a significant effect on the caseload but are too numerous to list here.

At issue in *King* v. *Smith*, 392 U.S. 309 (1968), was the validity of Alabama's so-called "substitute father" rule. The Supreme Court found that this regulation denies AFDC payments to the children of a mother who "cohabits" in or outside her home with any single or married able-bodied man. The State therefore denies aid to an otherwise eligible needy child on the basis that his substitute parent is not absent from the home. The Court held that the State's interest in discouraging immorality and illegitimacy is not relevant here and is therefore not a proper justification for AFDC disqualification. It pointed out that Congress has determined that immorality and illegitimacy should be dealt with through rehabilitative measures rather than measures that punish dependent children and that the method used by Alabama conflicts with the Social Security Act. The decision affected 18 other States and the District of Columbia, all of which had some version of the man-in-the-house rule.

The plaintiffs had argued that the "substitute father" rule violated the equal protection clause of the Constitution by denying aid to certain groups of needy families without any compelling justification. The Court held the rule to be inconsistent with the Social Security Act, and the case was decided without facing any constitutional issues.

The durational residence requirement, whereby assistance is denied residents who have not lived in the State for at least 1 year preceding their applications for assistance, was brought before the Court in *Shapiro* v. *Thompson*. According to data published by HEW, 40 States had a durational residence requirement for AFDC of 1 year at the end of 1967. This case was decided on a constitutional issue, that a residence requirement violates the equal protection clause. The statutory prohibition of benefits to residents of less than 1 year is a classification constituting "invidious discrimination" denying the plaintiffs the equal protection of the law. The Court recognized a legitimate State interest in safeguarding against the fraudulent receipt of welfare benefits but not by means which inhibit the migration of needy persons into a State. The implication of this decision, in its broadest construction, is that any State regulation that impinges on the so-called basic constitutional right of freedom to travel would be illegal.

Following this decision, New York, Connecticut, Colorado, Rhode Island, Utah, and West Virginia passed "emergency" residence requirements, arguing that they were necessary to prevent financial catastrophe resulting from rising welfare costs. The Court held them unconstitutional in 1972.

In *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), and *Wheeler* v. *Montgomery*, 397 U.S. 280 (1970), the Court decided that welfare recipients were entitled to a hearing before their benefits could be terminated. The function of the pretermination hearing is to produce an initial determination of the validity of the welfare department's grounds for discontinuance of payments in order to protect a recipient against erroneous termination. A recipient must have timely and adequate notice detailing the reasons for the proposed termination, and an effective opportunity to defend himself. The recipient is entitled to be represented by counsel, and an impartial decisionmaker must be used.

These cases were decided on the due process clause of the 14th amendment: "* * * nor shall any State deprive any person of life, liberty, or *property* without due process of law." [Emphasis added.] Welfare benefits were therefore implicitly given the status of property, with the protection granted all property rights under the Constitution. Justice Black's dissent, in contrast, considered welfare benefits as a gratuity, not as a right.

At issue in *Lewis* v. *Martin*, 397 U.S. 552 (1970), was the "man assuming the role of spouse" rule. The Court decided that, in the absence of proof of actual contribution, a State may not consider a child's resources to include either the income of a nonadopting stepfather who is not legally obligated to support the child or the income of a man assuming the role of spouse, whatever the nature of his obligation to support. The case was decided on statutory grounds, not on broad constitutional ones.

In *Dandridge* v. *Williams*, 397 U.S. 471 (1970), the Court ruled that the maximum imposed by Maryland on a family's welfare benefit was not prohibited by the Social Security Act, even though the maximum was substantially less than the standard of need of large families. Plaintiffs argued that a maximum violated the equal protection clause of the Constitution (as well as the supremacy clause). The Court held that, so long as there is some "reasonable basis" for a State law or regulation, there is no violation of the clause merely because the law is imperfect or unwise. The Court gave great weight to Maryland's finite financial resources and found that this, coupled with other "legitimate State interests," provided a "reasonable basis" for the maximum. This decision breaks with the use of the equal protection clause in the decisions described above. It also foretells the Court's permitting, in later decisions, wide latitude on the part of the States in administering welfare benefits.

In *Wyman* v. *James*, 400 U.S. 309 (1971), the Court ruled that the periodic home visits by caseworkers in connection with AFDC were a reasonable administrative tool, which served a valid and proper administrative purpose. It is not an unwarranted invasion of personal privacy and violates no fourth amendment rights. The termination of assistance to a recipient who refuses to permit a caseworker in the home was therefore proper.

The Court held that a State's denial of welfare benefits to resident aliens violated the equal protection clause of the Constitution in *Richardson* v. *Graham* and *Leger* v. *Sailer*, 403 U.S. 365 (1971). The case was decided on the basis of *Shapiro* v. *Thompson*.

The Social Security Act requires that States give AFDC to needy children between the ages of 18 and 21 if they are regularly attending a school, college, university, or a course of vocational or technical training. Illinois gave aid to children of these ages if they were attending a vocational, technical, or high school, but denied aid to children who attended college. The plaintiffs, in *Alexander and Townsend* v. *Swank*, 404 U.S. 282 (1971), attacked this provision on the grounds that it violated both the equal protection clause of the Constitution and the supremacy clause. The Court struck down the statute without addressing the equal protection issue. It held that a State eligibility standard that excludes persons eligible for assistance under Federal AFDC statutes violates the Social Security Act and is therefore invalid under the supremacy clause.

In *Amos* v. *Engelman*, 404 U.S. 23 (1971), New Jersey's "administrative ceiling" regulations of AFDC were held inconsistent with the Social Security Act. The regulation provides, in effect, that when the "available adjusted income" of a family exceeds a set amount, called the "administrative ceiling," members of the family are declared ineligible for AFDC. The ceiling is illegal because the State did not deduct from income the $30 and one-third earnings disregard as set forth by the Social Security Act and eligibility was determined on the basis of gross instead of net income. The case was decided on statutory, not constitutional, grounds.

In *Jefferson* v. *Hackney*, the Court was asked to rule not only on the updating requirement, discussed above, but on the manner in which the cost standard is reduced. The standard for AFDC recipients is reduced to 75 percent of the full standard while it is reduced to only 95 percent of the full standard for the blind and disabled, and not at all for the aged. Plaintiffs claimed that this differential violated the equal protection clause, because the proportion of AFDC recipients who are black or Mexican-American is higher than the proportion of recipients in the adult categories. The Court did not regard the statistical evidence as a prima facie case of discrimination in violation of the equal protection clause.

As the composition of the Court changed, so did the tone of its decisions. Prohibiting the substitute father rule, the durational residence requirement, and the man assuming the role of spouse rule, requiring a pretermination hearing, and giving welfare benefits the status of property all increased the poor's benefits and rights. With *Dandridge* v. *Williams*, however, the Court began giving the States more latitude in controlling the flow of welfare benefits. Maximum payments and home visits by caseworkers were ruled to be appropriate. *Alexander and Townsend* v. *Swank* and *Amos* v. *Engelman* were ruled in favor of the recipients, but the Court avoided the constitutional issues. In *Jefferson* v. *Hackney*, the Court was unwilling to require the States to make any changes in their welfare programs.

Conclusion

The AFDC program underwent considerable change between 1967 and 1971. On balance, these changes have improved the program. Payments have increased and eligibility has been broadened, the WIN program and the increased emphasis on social services have reduced welfare dependency to some extent at least, and the administration of the program is probably fairer. The growth in AFDC recipients and payments is further evidence that the program has become less restrictive and stigmatizing.

These changes indicate the potential for welfare reform within the existing system. Other changes could be made in the AFDC program which would improve it significantly. Requiring all States to use the simplified method of determining eligibility and payments, for example, would be a big step toward the type of nondiscretionary income maintenance system desired by many reformers. Requiring States to pay the full need of recipients, as was recommended by the Johnson administration in 1967, would make benefits much more adequate. Requiring States to give aid to families headed by unemployed fathers would reduce the incentive for family breakup and would make the program more equitable. All of these are incremental changes, but all would mean a significant improvement in the welfare system. If substituting an entirely new program for AFDC is not politically feasible at this time, tinkering could offer interim improvement.

PUBLIC ASSISTANCE AND SOCIAL SERVICES

By JOSEPH HEFFERNAN*

INTRODUCTION

There is currently a great deal of interest in the future Federal policy regarding social services and their relation to the reformulation of welfare policy. Many of the social service policy problems of this country are not related directly to income maintenance policy or even the amelioration of poverty. Social service programs for schools, hospitals, prisons, and other institutions will remain as public needs regardless of the resolution of the poverty problem. The demand for government subsidization of a complex set of social service facilities for nonpoor and noninstitutional populations also looms as a serious public issue. Many, including this author, argue that a proper social service policy should not be exclusively poverty related but that a government subsidized network of social services should be available to the poor and nonpoor alike. At this specific point in history, however, primary attention is centered on antipoverty social service policy.

The incumbent administration has expressed its conviction that its income strategy as formulated in the family assistance and opportunity for families programs must be accompanied by a specific social service strategy. On February 4, 1970, Secretary of Health, Education, and Welfare Richardson declared, "The family assistance plan seeks to deal with the shortcomings of the cash assistance system by increasing work incentives, supporting family stability, and providing a minimum level of income maintenance. But income maintenance alone cannot do the job of enhancing self-support and strengthening family life. The problems of dependency are far more complex than simply economic. While income support is critical it must be joined with an effective service program if the overriding goal—the lessening of dependency in America—is to be achieved." [1] The Secretary's statement needs to be read carefully for while it specifies a commitment to social service it also specifies a commitment to a particular strategy of social service which holds the promise of reducing transfer payments; social services are not justified on any intrinsic merit. The available evidence suggests that, whatever merit the provision of social services to a low-income population might have, it does not reflect itself in a reduction of relief rolls.[2] From 1964 to 1972, social service

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[1] HEW press release, Feb. 5, 1970, p. 1.

[2] G. Y. Steiner, The State of Welfare (Washington: Brookings Institution, 1970), pp. 35–40.

expenditures increased from $100 million to $1,600 million, and welfare caseloads rose from 7 million to 14 million persons. If caseload reductions are read as a proxy for reduction of dependency then it can only be said that the social service policy of the 1960's was an unmitigated disaster. With the evidence of the clear divergence between rhetoric and reality of the past decade as a backdrop, it will be useful to review the development of the current policy, to subject this policy to some critical analysis, and to suggest a frame of reference for the evaluation of some of the new policy options.

I. Development of Current Social Service Policy

With the passage of the Social Security Act of 1935, a new phase in the history of the Federal Government's activities to relieve inadequate income had begun.[3] The Social Security Act of 1935, was a major advance for those who could be classed as the "worthy poor," but the program did little for those whose destitution arose from conditions of which society disapproved. The poverty resulting from divorce, desertion, and illegitimacy was not considered as something for which society had a responsibility.[4] Even further from the minds of the authors of the Social Security Act was the notion that anyone had a right to publicly provided income. The Committee on Economic Security recognized, however, that it would take years before the social insurance programs would mature and, in the meantime, many worthy persons would be in need of financial assistance. Accordingly, a stopgap program of Federal-State aid to certain categories of the poor was established. Originally conceived as a program that would phase out as social insurance expanded and matured, the public assistance features of the Social Security Act received little legislative review at the time of the passage of the basic law and almost no legislative review in the first 25 years of its operation.

The first 10 years of experience with the federally aided programs was consistent with the optimistic premise on which the program was passed; that is, that the program would "wither away." From 1936 to 1946 public aid expenditures declined from $3.2 billion to a low of $1.4 billion. With the ending of the war and the return to "normalcy," public expenditures began to creep upward. For the decade 1946 to 1956, public aid expenditures kept pace with the growth in the GNP, remaining at a static 0.8 percent of the GNP. While no one at that time was predicting any upsurge in public aid expenditures, close students of the topic then recognized and reported that, far from withering, public aid had become a permanent part of the political economic landscape. This recognition forced a concern for the first time with a permanent public assistance policy that would serve in conjunction with a fully operative social insurance program rather than as just a holding operation until social insurance matured.

During this time there emerged a notion that the clientele of public assistance was different from the clientele of social insurance. It was

[3] H. I. Clark, Social Legislation (New York: Appleton-Croft, 1957); E. E. Witte, The Development of the Social Security Act (Madison, University of Wisconsin, 1962); A. M. Schlesinger, The Coming of the New Deal (Cambridge, Mass.: Houghton-Mifflin, 1957); C. I. Schottland, The Social Security Program in the United States (New York: Appleton-Century, Croft, 1963), p. 39.

[4] Steiner, Social Insecurity, ch. V.

argued that program emphasis in public assistance had to shift from "relief to rehabilitation." The goal of the new emphasis was fairly precise: welfare recipients would have to change from "tax consumers" to "tax payers." [5] It was hoped that future relief costs would be lessened by plowing money into rehabilitation programs.

Just how that magical event could occur was not specified. To learn more about the causes and more efficient ways of dealing with dependency, a series of demonstration projects, with a requested authorization of $5 million, was called for in the 1956 amendments to the Social Security Act. Congress did not wait for the evidence to be returned from the demonstration projects, for the same legislation specified that "services" to supplement cash payments were the road to rehabilitation. The approach taken here was the only one considered and it was the approach of professional social workers who were convinced at that time that poverty in an affluent society was a function of individual maladjustment which could be corrected via the professional process known as casework. The 1956 amendments further solidified a service strategy for poverty reduction by requiring that specific plans for rehabilitation be developed for each case before the Federal share of the assistance costs would be validated. Finally, the statement of purpose of the assistance features of the Social Security Act was amended to specifically declare that the intent of the aid was to establish or reestablish independent functioning on the part of the recipient. The enactment of the 1956 amendments was hailed by social workers as the second major landmark in American welfare history. Their celebration was 6 years premature, however. Appropriations to cover the authorization were never made and public assistance reform became dormant again until after the presidential election of 1960.

A. *The Kennedy Administration Reforms and the Public Assistance Amendments of 1962*

After his election but before his inauguration, President Kennedy established a task force on public assistance. The task force was headed by Wilbur J. Cohen, then professor of social work at the University of Michigan but soon to become Under Secretary and later Secretary of Health, Education, and Welfare. This was only the first of a number of study groups which were to put the existing public assistance structure under the microscope. Still prior to the inauguration and at the request of the President-elect, a group of respected leaders in the field gathered in New York to plan a broadly based study of public welfare, including, but not restricted to, public assistance. After President Kennedy's inauguration, his Secretary of Health, Education, and Welfare, Abraham Ribicoff, announced the formation of two further study groups. The first was an Ad Hoc Committee on Public Welfare made up of representatives of the National Association of Social Workers, groups representing public welfare, the private social agencies, and the schools of social work. Finally, a specialized study group was constituted to study the administrative aspects of the assistance programs. This last study was undertaken by George Wyman, the executive director of the Community Planning Council of Los Angeles, and later to

[5] Alan Keith-Lucas, Decisions About People in Need (Chapel Hill: University of North Carolina Press, 1957).

become commissioner, New York State Department of Social Services. Copies or summaries of all these studies are contained in the report on the hearings on H.R. 10032, before the Committee on Ways and Means of the House of Representatives, in the second session of the 87th Congress.

It is neither possible nor appropriate to make a detailed analysis of these studies here. In essence, they reiterated the inequalities and inadequacies of the fiscal aspects of assistance grants and the problems inherent in the Federal-State administration of such programs. Major attention was directed at three aspects of public assistance: the first was the problem that public understanding of public assistance programs in America was very much influenced by the conceptions of poverty in vogue from 1935 to 1960.[6 7 8]

The second problem extensively dealt with in these studies was the chronic dependency of second and even third generation families on relief.[9] Secretary Ribicoff himself expressed concern that many social workers "have become merely conduits between the State treasuries and those who seek help, neglecting prevention, rehabilitation, and protective services." [10] The Wyman study suggested that future legislation not only contain specific intent statements regarding restoration to self-support, but that there should be an open disavowal of public assistance as permanent relief. Those persons permanently in need of funds—the aged and the disabled who could not be rehabilitated—should be helped permanently through the insurance approach.

The third aspect of these studies dealt with the need for specific rehabilitative services. Social workers, in particular, considered this to be the central factor in the need for public assistance reform. The first public assistance programs were designed to care for basic categories of persons who could not care for themselves as a result of very specific conditions: being aged, blind, or a child deprived of parental support. As the report put it, the concern was now with a different group, a group for whom there were no readily visible reasons for its destitution but whose disability was nevertheless incapacitating. This group included those born into classes of society with little opportunity for education and job training, those born into unstable and unhealthy family situations who had little or no opportunity for normal growth and development, those hardest hit by population shifts and the technological revolutions, those who, while not being psychotic or feebleminded, were temperamentally and intellectually incapable of adjustment to the demands of our complex society; in short, those who were in need of "casework services." It was the social work contention that these individuals had swelled the relief roles in the aid to dependent children and general relief categories and were caught in the chains of dependency. But, because there was no readily visible cause of disability, these persons were viewed by the general public as lazy and shiftless. The report asserted that countless studies had demonstrated how these fam-

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[6] U.S. Congress, House Committee on Ways and Means, "Hearings on H.R. 10032," 87th Congress, second sess., 1962.

[7] A. J. Liebling, The Press (New York: Ballentine Books, 1961), p. 78.

[8] Vladimer Orland Key, Public Opinion and American Democracy (New York: Knopf), p. 411 ff.

[9] Hearings, op. cit., p. 118.

[10] Shaffer, "Public Welfare Policy," Editorial Research Reports, Oct. 4, 1961, p. 719.

ilies could be helped to become self-sufficient when services were made available.[11]

In the light of these and other findings, on February 1, 1962, the President sent to Congress a message concerning public assistance. It was the first such Presidential message ever sent to Congress to deal exclusively, or even primarily, with such a subject. The President said, in conclusion:

> Public welfare, in short, must be more than a salvage operation sucking up the debris from the wreckage of human lives. Its emphasis must be directed increasingly toward prevention and rehabilitation—on reducing not only the long-range cost in budgetary terms but on the long-range cost in human terms as well. Poverty weakens individuals and nations. Sounder public welfare policies will benefit the Nation, its economy, its morale, and most importantly, its people.[12]

The administration's legislative proposals pursued six basic objectives which were set forth by Abraham Ribicoff:

(1) *Services.*—Services to help families become self-supporting and independent.

(2) *Prevention.*—Prevention of dependency by dealing with the problems causing dependency.

(3) *Incentives.*—Incentives to recipients of public assistance to improve their condition so as to make public assistance unnecessary and incentives to the States to improve their welfare programs.

(4) *Rehabilitation.*—Services to rehabilitate recipients or those likely to become recipients of public assistance.

(5) *Independence.*—Useful community work and training programs and other measures to assist recipients to become self-supporting and able to care for themselves.

(6) *Training.*—Assistance in the provision of training in order to increase the supply of adequately trained public welfare personnel, this being necessary for achieving the foregoing objectives.[13]

The Public Welfare Amendments of 1962 became Public Law 87–543 on July 25, 1962. For the first time the rehabilitative aspects of public assistance were emphasized. The new law was an essential rewrite of the 1956 reforms with the significant difference that funding for their implementation was made available. One other significant difference is that an even greater reliance was placed on job-training and job-finding programs. For the Federal Government to enter directly as a partner in the negotiations for specific jobs constituted a dramatic break with the past and was to reveal the direction of reform efforts for the next decade.

Furthermore, for the first time these services could be offered not only to current recipients of relief but also to those likely to become relief recipients if the individual involved requested or agreed to such services. The training provisions allowed the Department of Health, Education, and Welfare to enter into contracts with or provide grants to either public or private accredited schools of social work for the purpose of providing trained personnel either by scholarship or grants to graduate students of social welfare or by the establishment of short courses not to exceed 1 year.[14]

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[11] Hearings, op. cit.

[12] Wilbur J. Cohen and Robert M. Ball, "Public Welfare Amendments of 1962," Social Security Bulletin, XXV (October 1962), p. 5.

[13] Hearings, op. cit., p. 63.

[14] For a detailed summary of the law see Secretary of Health, Education, and Welfare, State Letter 852, Summary of Public Law 87–543.

When the President signed the law he said:

I have approved a bill which makes possible the most far-reaching revision of our Public Welfare program since it was enacted in 1935.

This measure embodies a new approach—stressing services in addition to support, rehabilitation instead of relief, and training for useful work instead of prolonged dependency. This important legislation will assist our States and local public welfare agencies to redirect the incentives and services they offer to needy families and children and to aged and disabled people. Our objective is to prevent or reduce dependency and to encourage self-care and self-support—to maintain family life where it is adequate and to restore it where it is deficient.[15]

The jubilation which accompanied the adoption of a service strategy was short lived. There simply had not been enough thought given to the benefits, costs, and limits to service programs. Supporters of a service approach to poverty reduction soon found themselves trapped by their own rhetoric. Despite a decidedly improved economic situation, public assistance rolls grew instead of declining and whatever good the service strategy might have achieved was not reflected in a decline of numbers on relief. In fact it is sometimes argued that the recruitment of young and educated social workers had exactly the opposite effect since these new workers saw themselves as advocates for their clients rather than protectors of governmental funds. As "advocates" some actively recruited potential clients.

B. Reforms of 1967

Only a year after the adoption of the 1962 amendments the problems of false advertising became apparent to the social work community. In 1963, when the planning for the Economic Opportunity Act got underway, social work professionals found the conference doors locked to them.[16] By 1967, everyone was embarrassed by reference to the promises made in 1962. Some desultory arguments were made that the amendment had not been given a chance, but the AFDC category, in which casework intervention was to have had its basic impact, showed the greatest growth. There was little that the administration of HEW could do to counter congressional wrath.

Wilbur Mills, chairman of the House Committee on Ways and Means, came to the conclusion that a Federal subsidy of service was insufficient. The Mills strategy called for greater Federal controls over the welfare system in general and social service policy in particular. First, he proposed that the proportion of children on relief because of illegitimacy or desertion remain static. The legislation did not specify an absolute numbers limit on AFDC cases but rather that the proportion of children on AFDC as of January 1, 1968, should not increase. Second, work incentives would be built into the program by establishing a rule that $30 and one-third of the remaining monthly earnings would not count in calculating budget levels and payments. Third, a work training program would be established under the auspices of the Department of Labor, not HEW. Congress specifically required more stringent procedures in locating and obtaining support from deserting fathers of AFDC families. Finally, States were required to offer family planning counseling.

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[15] Social Security Bulletin, XXV (October 1962), p. 10.

[16] J. Donovan, The Politics of Poverty (New York, Pegasus, 1967).

The real thrust of the 1967 amendments was obscured for a few years by a debate over the "freeze" on the growth of AFDC, the implementation of which was twice delayed and finally repealed by Congress in July of 1969. While legislative and administrative debate focused on the freeze and a Federal requirement that the States be more diligent in enforcing support by absent fathers, a far more significant feature of the 1967 amendments escaped public, or even much administrative, attention. This feature allowed departments of public welfare to purchase services from private and other public agencies. Such expenditures would be matched 3 for 1 with Federal dollars. In 1967, the year of passage, social service expenditures were $248 million on 607,000 children. In fiscal year 1971, $1.6 billion was spent to aid 12 million children. Service expenditures not only were not decreasing caseloads, but the service expenditure growth greatly exceeded the assistance expenditure growth. When, at the Governor's Conference in May of 1972, a report was circulated that Federal service expenditures in fiscal year 1973 would go up to $1.7 billion, congressional support for social service programs largely evaporated. The $4.7 billion figure was not based on predicted expenditures in fiscal year 1973 for all States, but rather on estimates of some States of what they could spend if they took full advantage of the Federal statutes.

Administration efforts to limit Federal financing of social service expenditures was tied to the adminstration's efforts to pass the family assistance plan. Between House passage of H.R. 16311 on April 21, 1970, and Senate Finance Committee consideration, the administration developed a comprehensive proposal which would have dealt exclusively with consolidated services for adults, families with children, and child welfare services. While the administration did not then seek a specific ceiling on such expenditures, it would have replaced the open-ended match with a "sum specific" appropriation. The allocations among the States were to be based principally on service expenditures in fiscal year 1971. This provision would have had the effect of basing long-term Federal sharing on the States' expenditures in the next fiscal year. When it is recalled that passage of H.R. 16311 was regarded as likely, it is not surprising that there was an expansion of social service expenditures between fiscal year 1970 and fiscal year 1971, from $522 million to $746 million. States were afraid that they would be left out if they did not expand.

The program's explosive growth quickly became the biggest fiscal issue facing the beleaguered HEW. In June of 1972, Secretary Richardson said in an interview, "It's frustrating, indeed exasperating, to sweat over the budget and then see this open-ended matching program absorb funds in a manner unrelated to our attempts to establish priorities. If I knew services were truly effective, I would not be so concerned." [17] Charles Miller, Deputy Assistant HEW Secretary (budget) commented that the program expansion was producing a very questionable form of revenue sharing with the States.[18] The administration had twice tried to place a 10-percent growth limit on social service expenditures in the President's budget messages of fiscal year 1971 and fiscal year 1972. It had been defeated in both attempts.

[17] National Journal, June 17, 1972, p. 1007.

[18] Ibid.

The shift from open-ended matching to a specific sum appropriation in the welfare reform package seemed certain of defeat with the inability of the Senate to agree on a form for welfare reform.

In the summer of 1972, the administration intensified its efforts to cap social service spending. In a letter to 282 Members of the House and Senate, Secretary Richardson urged them to vote against any conference report on welfare reform that did not contain a specific limitation on social service expenditures. The administration's efforts were finally crowned with success on September 12, 1972, when the Senate accepted a "non-germane" amendment to the revenue-sharing bill which placed a fixed $2.6 billion limit on social service expenditures in fiscal year 1973. This amount was reduced to $2.5 billion in conference and passed by Both Houses in the waning days of the 92d Congress. The final version specified:

(1) That each State's proportionate share would be based on its proportionate share of the population.

(2) The 75-percent match would continue until the State had reached its proportionate share.

(3) Except for designated services to drug addicts, alcoholics, and mentally retarded plus child care and family planning programs, 90 percent of the expenditures would have to be made on behalf of current welfare recipients.

(4) The Secretary was given the power (which he already had) to prescribe regulations under which the State could purchase services.

(5) Expenditures under the WIN program would not be subject to the above limitations.

(6) Expenditures for emergencies were cut from 75 percent to 50 percent Federal matching and subject to the closed appropriations.

The cap on social service was thus in place; its impact cannot yet be assessed. It is perhaps fair to say that mindless growth was matched by mindless cutting.

II. What's Wrong With Services Today?

In the years since 1967, criticism of social services in public assistance programs has continued to grow, reaching what one governmental report called a "crisis of confidence." Recent studies of the efficacy of social services have revealed that even when services are offered under nearly ideal circumstances—by highly educated professionals servicing small caseloads which are especially selected for their suitability for casework intervention—clients are likely to regard the service as vague and pleasant but irrevelant. Further, the services make no significant impact on welfare caseloads. The studies showed no reduction in caseload increases or duration as a result of dollars spent on service delivery. These studies collectively have challenged the basic premise of the service strategy, for they have failed to demonstrate a connection between service intervention and the recipient quitting relief.

A second factor casting a pall over current social service strategy is the unprecedented growth in public welfare rolls since 1964. The precise reason for the expansion of welfare rolls is a subject of debate, but clearly the argument of caseload reduction via the infusion of massive social service is refuted.

Perhaps the thing that is most disturbing to students of social service is what occurs when there is a separation of assistance from income maintenance. Separation almost universally has resulted in confusion because it has revealed the vagueness and irrelevance of antipoverty social services. Caseworkers, usually persons with a baccalaureate degree in fields other than social work, are understandably frustrated when the traditional budget determination function is turned over to case technicians and they are given vague general service guidelines such as "to use the community resources to promote better family life." The technical tasks associated with check disbursing were complex, but they were at least knowable, while the unspecified service tasks have produced frustrations.

From client surveys, cost-benefit studies, reports of demonstration projects, and from casual conversations with lineworkers a single impression emerges: social services do not attain their legislatively mandated goal. Whether or not they have a significant and positive impact on the lives of clients is still a subject of legitimate debate. Policy conscious critics have developed the following list of complaints about current social service policy.

(1) *Social services are too loosely defined.*

There is no general agreement as to what constitutes social service. Some studies merely list a catalog of social worker activities and call these social services. Others define services in terms of highly generalized goals like "strengthening family life" or "planning for the future." Definition of services in terms of general objectives rather than by techniques used in the attainment of those objectives makes realistic legislative review difficult if not impossible.

(2) *Services, even when specified, are offered without consideration of staff competences.*

To offer families on the caseload all of the services listed, an individual caseworker would have to have a basic familiarity with the total range of "hard" services available in his community such as legal aid, medical services, housing programs, and day care. He would also have to be competent in counseling on family planning, home management, nutrition, and school problems. Finally, he would need to be a sensitive therapist with the capacity to prevent potentially explosive situations. It is blatantly unrealistic to assume that untrained social workers, whose average stay on the job as caseworkers is significantly less than 5 years, can attain this high level of competence, and to operate the program as if they possessed this competence is to invite policy failure.

(3) *Little systematic research is done on ideal staffing patterns.*

Three general patterns of agency organization for the delivery of the services predominate: (1) organization on the basis of geographic areas; (2) organization on the basis of client categories, such as the old, the disabled, families with children; and (3) organization on the basis of client problems, that is, high employment potential cases, protective service cases, "defined service" cases, and so forth. Frequently, if not generally, agencies have combinations of these three patterns and seem to be in a constant state of moving from one pattern to another: they always seem to have just completed or just started a reorganization.

(4) *Many services serve only a bureaucratic function.*

Almost all caseworkers complain about the time spent in completing forms and reports which have no visible connection to agency functions or client well-being. The prime example is the completion of a social study on each public assistance case and each child whether or not services seem necessary. In one agency the most highly trained worker was assigned to preparing social histories on closed cases because these were the most difficult to find and to enlist client cooperation for.

(5) *Despite bureaucratic requirements, real accountability is low.*

In part, accountability is impossible because of the vagueness of services. In addition, most agencies have no auditing procedures to review the actual delivery of services, and nowhere are caseworkers held responsible for any tangible results. Direct observation of caseworker-client interaction is deplored as a violation of the caseworker's "professional integrity," despite the fact that in most instances the caseworkers only claim to professionalism is his current job classification. While real accountability is low, workers complain of being oversupervised, and the excessive, but nonsubstantive, reviews lead to gross exaggerations about the quality of services offered and results obtained.

(6) *Limited client participation results in a self-defeating paternalistic pattern of services delivery.*

Theoretically, the client selects any service he wants and refuses any service he does not want. But in practice, except in urban areas where active welfare rights organizations inform clients of their rights, the client's perception of caseworker control over his welfare payment forces him to accept caseworker judgments about services offered. At a minimum the client must submit to a "social study," an employment evaluation, and an examination of his children's school performance. Whether by "caseworker" or "case aid," this intervention may actually contribute to a client's sense of dependency rather than reducing it. Clearly, it leads to the charge of "welfare colonialism" which serves as a significant barrier to caseworker-client interaction.

Because of these problems, the "classical model" of an ideal public welfare agency offering only social services requested by clients may never have received a fair test. In fact, only a limited number of rigorous studies have been conducted on the impact of casework and other services, regardless of the conditions under which they are delivered. There is, of course, an inherent difficulty in measuring changes in behavior. And many social workers would argue that overt behavioral changes are not always the goal of casework. But, the public welfare system does set forth specific goals which should, in part, lead to measurable behavioral changes—this is it, stronger family life, self-support, self-care, and especially rehabilitation.

Two major studies have been published which attempt to measure the impact of intensive casework services on objective indexes of behavior of groups of individuals. The first is Henry Meyer's "Girls at Vocational High, An Experiment in Social Work Intervention." [19] In this study two groups of delinquent high school girls are identified.

[19] Henry Meyer, Girls at Vocational High. An Experiment in Social Work Intervention (New York: Russell Sage Foundation, 1965).

One group received intensive casework therapy while the control group received none, yet no significant difference was found between the two groups in continued delinquent behavior or rates of recidivism.

In another study sponsored by New York's State Communities' Aid Association, published in a book entitled, "The Multi-Problem Dilemma,"[20] 50 welfare families having a variety of financial, health, adjustment, and other problems were given intensive casework services by professional social workers working with small caseloads. Over a period of 31 months improvement of the study groups was compared with that of a control group given routine welfare services.. Progress in family functioning was measured on nine major and 25 minor dimensions. The major dimensions included such items as family relationships and family unity; individual behavior and adjustment; how the children were raised; the way money was handled; household practices; and the family's social life. Summaries of family progress were prepared based primarily on interviews, but supplemented by records from schools, courts, the probation office, the welfare department, and other public and private agencies. The before-and-after family summaries were submitted to teams of trained judges (prominent professional social workers) who independently rated each dimension of family functioning. The basic finding of the study was that the demonstration group did improve slightly more than the control group over this period, but the margin was so slight it was not statistically significant.

If self-sufficiency and personal "adjustment" are the litmus tests of successful social service intervention then it is clear that social services do not pass the test. Indeed, it is a measure of our naivete that ill-defined services by themselves were ever expected to overcome some of the most basic social and economic problems in our society. Programs to assist the released prisoner, aid the dependent and neglected child, or provide rehabilitation for drug users, when falsely justified by the goal of reducing welfare cost, erode public support for both welfare and the programs.

If the rationale for services is not directly to the recipients quitting relief, then a defensible alternative rationale must be specified if social services are to continue to be federally subsidized, especially under the public assistance titles of the Social Security Act. The alternative rationale then would become the program objective and the contribution of social services to that objective would have to be empirically established. If such a contribution is not established, (as it has not been for reducing dependency) a severe curtailment of social service expenditures is nearly inevitable.

III. A Policy Perspective

A. The Definition of Services

The root problem in policy evaluation of social service programs is, as so often is the case, a definitional one. Conversations with caseworkers, welfare administrators, social work educators, and policy

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[20] Gordon E. Brown, editor, The Multi-Problem Dilemma: A Social Research Demonstration with Multi-Problem Families (Metuchen, N.J.: Scarecrow Press, 1968).

evaluators reveal wide and irreconcilable concepts of what constitutes social service. It is apparent, however, that the term is used both in a symbolic and a collective sense, and the diverse usage produces undesirable policy. At a symbolic level, social service refers to those activities undertaken with the client to transform him from a dependent to a productive member of society. In a collective sense, social service also refers to a laundry list of noncash benefits (and sanctions) provided for (imposed on) relief recipients as part of the contract of receiving assistance. A curious quirk in the existing legislation which provides for 75-percent Federal funding for social service activities but only 50-percent Federal funding of administrative activities is an open invitation for calling a purely administrative function a social service activity. Clients must apply for assistance and applications for aid are for the most part an administrative activity. In public assistance, however, this becomes a social service which qualifies for the higher Federal reimbursement. Social services thus become a diverse mixture of agency activities, with each particular activity subject to different problems in the application of any social cost/benefit analysis.

One gains only a partial advantage, however, by saying that social services are not services designed to facilitate the securing of employment, to reduce the welfare rolls, or to administer welfare. And the definition of social services as things social workers do is circular. The chart below shows how social service funds are currently being spent. Many of these are highly specific activities, each of which could be given highly specific objectives and each of which could undergo a separate cost/benefit analysis. A program of homemaker aid to the elderly, for example, can be evaluated in dollar terms by the number of persons maintained in their own homes at lower cost than institutionalization. The psychic benefits to the aged person, his relatives, and others from maintenance in his own home versus institutionalization probably cannot be made objective. Similarly, a program of counseling to teenagers may have to be accepted on faith. The relevant fact here is that we have a set of programs which for want of a better name we call service programs. And the failure to differentiate objectives of specific social service programs inhibits congressional evaluation of each service. Any future reform must meet the standard of being explicit on the social service component and its evaluative criteria.

TABLE 1.—*Estimated national results: Social service expenditure detail by category, fiscal year 1971*[1]

[Dollar amounts in thousands]

Social service	Total		Expenditure amounts				Percent of total				Percentage distribution			
	Amount	Percent of total	Adult	IVA	IVB	Other	Adult	IVA	IVB	Other	Adult	IVA	IVB	Other
All services	$1,642,049	100.0	$229,157	$799,064	$596,812	$17,016	100.0	100.0	100.0	100.0	14.0	48.7	36.3	1.0
Information and referral	65,975	4.0	24,458	36,403	4,220	894	10.7	4.6	.7	5.3	37.1	55.1	6.4	1.4
Adoption	53,719	3.3		35,814	17,905			4.5	3.0			66.7	33.3	
Child foster care	613,489	37.5		111,878	501,587	24		14.0	84.0	.1		18.2	81.8	
Unmarried mothers	24,650	1.5		19,292	5,244	114		2.4	.9	.7		78.2	21.3	.5
Child protection	81,970	5.0		67,390	14,580			8.4	2.4			82.2	17.8	
Child care	269,619	16.4		233,410	35,800	409		29.2	6.0	2.4		86.5	13.3	.2
Child development	28,966	1.8		24,106	4,860			3.0	.8			83.2	16.8	
Adult and family functioning	32,256	2.0	8,953	16,538	3,068	3,697	3.9	2.1	.5	21.7	27.7	51.3	9.5	11.5
Family planning	6,819	.4	582	6,206		31	.3	.8		.2	8.5	91.0		.5
Money management	13,693	.8	2,843	10,395		455	1.2	1.3		2.7	20.8	75.9		3.3
Housing	31,802	1.9	8,743	21,409	128	1,522	3.8	2.7		8.9	27.5	67.3	.4	4.8
Homemaker and chore	97,157	5.9	50,681	40,757	2,698	3,021	22.1	5.1	.5	17.8	52.2	41.9	2.8	3.1
WIN employment	80,017	4.9		80,017				10.0				100.0		
Employment and training	54,654	3.3	17,150	36,373	256	875	7.5	4.6	.1	5.1	31.4	66.5	.5	1.6
Health	41,796	2.5	19,970	20,366	512	948	8.7	2.5	.1	5.6	47.8	48.7	1.2	2.3
Alcohol and drug treatment	17,496	1.1	12,954	3,207		1,335	5.6	.4		7.8	74.1	18.3		7.6
Adult protection	21,311	1.3	19,680			1,631	8.6			9.6	92.3			7.7
Home and commercial living	16,697	1.0	16,448			249	7.2			1.5	98.5			1.5
Institutional living	28,628	1.7	27,654			974	12.1			5.7	96.6			3.4
Special needs	13,840	.8	4,539	8,769	128	404	2.0	1.1		2.4	32.8	63.4	.9	2.9
Other services	47,495	2.9	14,502	26,734	5,826	433	6.3	3.3	1.0	2.5	30.5	56.3	12.3	.9

[1] Cost analysis of social services, HEW contract SRS 71-36. Touche Ross & Co., 1972, Washington, D.C.

B. The Relationship of Services and Income Maintenance Programs

The clear implication of the foregoing discussion on the definition of social services is that there are a group of identifiable services which should be considered on their own merits and apart from welfare and welfare reform. Indeed, much of the current expenditure on social services is for programs such as drug addiction, felony rehabilitation, and retardation programs, which bear only a distant relationship to welfare. Many of these and other services do and should continue to serve the community at large but, because of the nature of the services, spending may be concentrated most heavily on the poor. Some of these services, such as subsidized day care, are in-kind transfers and whether they should be retained as a substitute for cash transfers is a matter of political judgment.

A few of the services may continue to be imposed on clients either as a means of controlling access to relief or as a manifestation of the moral judgments of the nonpoor about the poor. Services which are imposed on welfare recipients could discourage potential recipients from applying for assistance and reduce service effectiveness. On the other hand, programs which clearly have some value to their recipients, if provided only to persons on welfare, could encourage people to arrange their lives and their incomes to gain access to or remain on welfare in order to retain a claim to the service, say, heavily subsidized day care. Thus, the structure and the manner of administration of social service programs can artificially affect the size of the recipient population, and these factors must be considered in program design.

C. Federal-State Involvement in Social Services

The proliferation of Federal social service programs with diverse Federal matching formulas has had an unquestioned deleterious effect on program planning. States have apparently responded to the more favorable Federal matching formula rather than the objective needs of their citizens or the success of different services in meeting specific goals. The net result is a panoply of objections:

(1) Federal officials at HEW complain about their lack of control over expenditures.

(2) Members of Congress complain over the lack of specificity in requests for funds.

(3) Clients complain about a set of services unrelated to their own perceived needs.

(4) State welfare planners complain about the uncertainty of funds which makes long range planning impossible.

(5) Caseworkers complain about being in the middle and the poor complain about being on the bottom.

(6) Governors and mayors object to federally set service priorities which may not reflect local needs; nonetheless, to get Federal dollars they must develop programs to meet Federal specifications.

(7) The social service programs have been intimately connected to relief programs and have acquired in client and public perceptions the stigma that is associated with relief.

These objections stem in large part from the fact that there is no one service package which is appropriate either in every locality or in conjunction with every public assistance operation. What emerges is a picture of the Federal Government being at the same time both too general and too specific with respect to social service program development.

At the least, Federal funding sources should be streamlined and funds distributed more equitably. And the Federal Government should define the services which it deems of sufficient national importance to be given priority in Federal funding. At the same time, there should be sufficient flexibility to permit States to develop locally relevant programs.

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