

# The Welfare System and the Farm Laborer

## I. INTRODUCTION

When America “rediscovered” poverty in the early part of the last decade, considerable public attention focused on the welfare system. The discovery was startling. Few of those who applied for, or received, public assistance understood their legal rights under the welfare system. People who worked with welfare recipients, primarily community action organizers, civil rights workers, and others, including lawyers, did not understand the legal rights of their clients. The most surprising discovery, however, was that the persons legally bound to inform the recipient of his rights, the welfare caseworker and administrator,<sup>1</sup> were often ignorant of the most important laws governing the welfare system. The general lack of knowledge or understanding of the public assistance laws was attacked by both welfare recipients and welfare caseworkers. The recipients blamed their lack of knowledge of their rights on the arbitrary practices of welfare departments.<sup>2</sup> Welfare caseworkers pointed to the incomprehensible, unorganized, and poorly indexed technical material as the

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<sup>1</sup>CAL. WELF. & INST'NS CODE §§ 10500, 11004; CAL. DEP'T OF SOCIAL WELFARE, PUBLIC SOCIAL SERVICES MANUAL § 40—107.1 [hereinafter cited as CAL. PSS MANUAL]; see *Diaz v. Quitoriano*, 268 A.C.A. 82, 74 Cal. Rptr. 358 (1969).

<sup>2</sup>The following is a typical comment by a welfare recipient: “I would like to demand, more or less, that social workers... know the manual, the rules, and what the people are entitled to, and I believe that when they come to your home..., and you ask them straight-forward, honest questions, that we should have straight-forward, honest answers. Because for one year I never received one answer to any of the

basic cause of welfare worker confusion.<sup>3</sup> The inadequacies of the welfare system encouraged recipients to organize to demand their rights.<sup>4</sup> The resulting "rights revolution" regained many legal rights lost through lack of enforcement of existing laws and regulations and attacked the lingering "gratuity" concept of welfare.

The "gratuity" concept, first introduced into the law by the Elizabethan Poor Laws of 1601,<sup>5</sup> presumes that welfare is a "privilege" and not a "right" and, therefore, society has no real obligation to support the poor.<sup>6</sup> In opposition to the "gratuity" concept, the civil rights movement, in part, has asserted the "right to life" as the basis for a new legal system of aiding poverty-stricken welfare recipients.<sup>7</sup> According to the new "right to life" concept there is a constitutional right to the minimum necessities of life.<sup>8</sup> Various legal theories have been presented in support of this right. The basis for some of the legal arguments are:

(1) The adoption of the Declaration of Independence by the Continental Congress on July 4, 1776, ingraining the idea that man "was endowed with certain inalienable rights, that among these are life, liberty and the pursuit of happiness [and] [t]hat to secure these rights, governments are instituted among [m]en...,"<sup>9</sup> supports the

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questions and they were relevant." *Hearing on Public Assistance Grants before the Cal. Assembly Interim Comm. on Social Welfare* 87 (Hearing of Dec. 12 & 13, 1966) [hereinafter cited as *Hearings on Public Assistance Grants*].

<sup>3</sup>"One of the problems that many social workers have told me is that the regulations would make a stack about five feet high that they're supposed to understand and interpret. I have a standard complaint from most of them that they spend an inordinate amount of time reading and trying to understand regulations at the expense of case work and working with the recipient and the family on their problems." *Id.* at 87.

<sup>4</sup>The largest of the welfare rights organizations is the National Welfare Rights Organization. For a discussion of welfare rights organizations, see Shaffer, *Welfare Rights Organizations: Friend or Foe?*, SOCIAL WORK PRACTICE, SELECTED PAPERS, 94th ANNUAL FORUM, NATIONAL CONFERENCE ON SOCIAL WELFARE 219 (1967). Two cases where welfare rights organizations obtained benefits for recipients are *In re Appeal of Philadelphia Welfare Rights Organization, West District*, noted in 16 WELF. L. BULL. 12 (March, 1969); *New Orleans Welfare Organization v. Bonn* (E.D. La., June 6, 1969), noted in 3 CLEARINGHOUSE REV. 150 (June 1969).

<sup>5</sup>43 Eliz. 1, c.2 (1601).

<sup>6</sup>See *People ex rel. Heydenreich v. Lyons*, 374 Ill. 557, 30 N.E. 2d 46, 50—51 (1940) (State has no duty to provide welfare assistance).

<sup>7</sup>See A. SMITH, *THE RIGHT TO LIFE* (1955).

<sup>8</sup>*Id.* at 98. See Reich, *The New Property*, 73 YALE L.J. 733, 785—86 (1964); Reich, *The Law of the Planned Society*, 75 YALE L.J. 1227, 1265 (1966). In these articles Professor Reich discusses the role of constitutional provisions as a guarantor of "equality in the sense of a minimum share in the commonwealth." *Id.* at 1265.

<sup>9</sup>Comment, *Thompson v. Shapiro: Residence Requirements and the Right to Life*, 15 CATHOLIC LAWYER 265, 274 (1969) [hereinafter cited as *Residence*

right to life, especially when weighted with the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations.<sup>10</sup>

(2) The right to a minimum standard of living is implicit in the Bill of Rights because none of the enumerated rights can be exercised by a person who is starving to death.<sup>11</sup>

(3) The government cannot provide for the welfare and health of impoverished children under existing programs and at the same time ignore other classes of individuals equally needing the means to live. Failure to provide adequate care for all needy persons is a denial of equal protection of the law.<sup>12</sup>

(4) The federal government has considerable control over the economy and distribution of wealth in the United States. Since certain aspects of its involvement have contributed to poverty, the federal government must guarantee every American access to the basic necessities of life.<sup>13</sup>

(5) If the federal government influences the economy and acts affirmatively to help the poor, it must do the job properly; the government must carry through with programs effective enough to provide every American with access to the basic necessities. Once having started a program, the government has a duty to guarantee a minimal result within some reasonable period of time.<sup>14</sup>

(6) The Constitution guarantees all persons the right to privacy and to the conditions which are indispensable to its realization. Adequate shelter, food, and other rudimentary necessities are preconditions to enjoying a right of privacy. Welfare payments inadequate

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*Requirements and the Right to Life*] quoting the Declaration of Independence.

<sup>10</sup>“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Universal Declaration of Human Rights, Art. 25, UNITED NATIONS YEARBOOK ON HUMAN RIGHTS FOR 1948, at 467 (1950). See *Residency Requirements and the Right to Life*, *supra* note 9, at 274.

<sup>11</sup>Address by Edward V. Sparer at Institute on Emerging Issues of Social Justice for the Poor, University of California, Berkeley, February 10, 1968, *noted in* 2 C.E.B. LEGAL SERVICES GAZETTE 135 (1968).

<sup>12</sup>*Id.*

<sup>13</sup>Harvith, *Federal Equal Protection and Welfare Assistance*, 31 ALBANY L. REV. 210, 241—45 (1967).

<sup>14</sup>*Id.* The author would apply a rule similar to the common law tort doctrine regarding the volunteer, under which a bystander does not have a duty to act to save a drowning child, but once a person volunteers to act he is liable for any negligence, or for failing to complete the rescue attempted. A similar argument is made in *Residence Requirements and the Right to Life*, *supra* note 9, at 275.

for obtaining these necessities are in violation of this right to privacy.<sup>15</sup>

Although there has not been a total acceptance of the "right to life" concept, its supportive movement has forced government officials, administrators and the general public to re-examine public assistance systems currently being used. Not surprisingly, the main impact of the movement has been felt in the cities where the need to solve the social problems created by poverty has become acute. Poverty in rural America, however, has been long neglected. Rural communities in 1949 were referred to as the "last frontier of social work".<sup>16</sup> Such a characterization still accurately describes much of the current rural welfare reform. In part, it has taken urban civil disorder and the resulting commission reports describing the impact of rural migration into urban centers to turn public attention back to the poverty in rural America.<sup>17</sup>

The purpose of this chapter is to illuminate some of the realities of the welfare system in the context of the rural recipient with the hope that any serious attempt to revise the public assistance system will consider the special problems of the rural poor. The discussion will emphasize three special problems of the California farmworker which have a unique effect on his relationship with the welfare system. These problems are: rural political and economic pressures, the transiency of the migrant labor force, and the farm laborer's unusual employment condition. To put these specific problems in proper perspective, it is necessary to analyze briefly some of the general and more visible problems of the welfare system.

## II. THE WELFARE SYSTEM: THE RECIPIENT'S VIEWPOINT

### *A. Welfare Programs*

"Welfare," as the term is commonly understood, actually includes two distinct programs. One program, authorized by the

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<sup>15</sup>Bendich, *Privacy, Poverty and the Constitution*, 54 CALIF. L. REV. 407, 434—35 (1966).

<sup>16</sup>B. LANDIS, RURAL WELFARE SERVICE, preface (1949).

<sup>17</sup>See PRESIDENT'S NAT'L ADVISORY COMM'N ON RURAL POVERTY, THE PEOPLE LEFT BEHIND 11—13 (1967); U.S. DEP'T OF JUSTICE AND OFFICE OF ECONOMIC OPPORTUNITY, PROCEEDINGS OF THE NATIONAL CONFERENCE ON LAW AND POVERTY 11 (1965) [hereinafter cited as PROCEEDINGS ON LAW AND POVERTY].

Social Security Act, is financed jointly by state and federal governments.<sup>18</sup> This program is administered by the states, usually through county welfare boards. It protects particular categories of people: the old,<sup>19</sup> the blind,<sup>20</sup> the totally disabled,<sup>21</sup> and families with dependent children deprived of parental care or support.<sup>22</sup> The other welfare program, called general assistance or general relief, is commonly a state or locally funded program administered by each city or county. The general assistance program provides aid to needy persons not qualifying for categorical assistance, especially persons without children.<sup>23</sup> Persons awaiting determination of their eligibility under a categorical program may also obtain general assistance on an emergency basis. Compared with categorical assistance, the general assistance program usually grants fewer "rights" to the recipient and pays lower benefits.<sup>24</sup> Since the implementation of general assistance is usually a local option, there is a greater degree of the "gratuity" concept evident in its administration.<sup>25</sup>

The 1967 Amendments to the Social Security Act specifically

<sup>18</sup>42 U.S.C. §§ 303, 603, 1203, 1353 (1964), *as amended*, (Supp. IV, 1965—1968)

<sup>19</sup>OLD AGE SECURITY (OAS), 42 U.S.C. §§ 301—06 (1964), *as amended*, (Supp. IV, 1965—1968); CAL. WELF. & INST'NS CODE §§ 12200—52 (West 1966), *as amended*, (West Supp. 1970).

<sup>20</sup>AID TO THE BLIND (AB), 42 U.S.C. §§ 1201—06 (1964), *as amended*, (Supp. IV, 1965—1968); CAL. WELF. & INST'NS CODE §§ 12500—850 (West 1966), *as amended*, (West Supp. 1970).

<sup>21</sup>AID TO THE PERMANENTLY AND TOTALLY DISABLED (APTD), 42 U.S.C. §§ 1351—55 (1964), *as amended*, (Supp. IV, 1965—1968); CAL. WELF. & INST'NS CODE §§ 13500—801 (West 1966), *as amended*, (West Supp. 1970).

<sup>22</sup>AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC), 42 U.S.C. §§ 601—09 (1964), *as amended*, (Supp. IV, 1965—1968); CAL. WELF. & INST'NS CODE §§ 11200—507 (West 1966), *as amended*, (West Supp. 1970).

<sup>23</sup>PRESIDENT'S ADVISORY COUNCIL ON PUBLIC WELFARE, HAVING THE POWER, WE HAVE THE DUTY 25 (1966).

<sup>24</sup>For a discussion of inequities in the general assistance programs in terms of lack of equal protection, see Horowitz & Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State*, 15 U.C.L.A.L. REV. 787, 812—15 (1968).

<sup>25</sup>In California each county is required to establish a program which will "relieve and support" certain needy persons pursuant to standards adopted by the county board of supervisors. CAL. WELF. & INST'NS CODE §§ 17000—01 (West 1966), *as amended*, (West Supp. 1970). The duty to "relieve and support" all indigent persons who are residing in the county when such persons are not relieved by their relatives or by other means is mandatory. *Los Angeles County v. Frisbie*, 19 Cal. 2d 634, 122 P.2d 526 (1942). In *Los Angeles County v. Department of Social Welfare*, 41 Cal. 2d 455, 260 P.2d 41 (1953) and *Patten v. San Diego County* 106 Cal. App. 2d 467, 235 P.2d 217 (1951), however, the court held that the state welfare agency had no power to supervise or control the general assistance program and had no jurisdiction to consider complaints about it. Authority is vested exclusively in the counties to determine eligibility for, the time for, the type and amount of, and the conditions to be attached to general relief. For a strong critique of this decision, see ten Broek &

authorize emergency aid to families with dependent children.<sup>26</sup> Under a program called Emergency Assistance to Needy Families with Children, a state may obtain federal financial participation if it has an approved plan of emergency assistance in conformity with federal regulations.<sup>27</sup> The plan adopted may consist of assistance in the way of money, food, clothing, medical care, or services which meet needs attributable to crises or emergency situations. The assistance available, however, cannot be offered for more than 30 days in any twelve month period. Eligibility may be more liberal than for the regular categorical aid to families with dependent children. Recipients of aid may also consist of migrant workers with families within the state, if the approved plan specifies that they will be included.<sup>28</sup> Assistance to migrant workers may be offered on a statewide basis or in such part or parts of the state as the individual state designates.<sup>29</sup> No benefits, however, may be given to families whose need arises out of the refusal, without good cause, of a child or relative to accept employment or training for employment.<sup>30</sup>

### *B. Welfare Inequities Caused By Eligibility Requirements*

Numerous articles and books have analysed the inequities caused by welfare eligibility requirements.<sup>31</sup> The source of most objections to the welfare system is the use of eligibility tests. "Need" is only one of many criteria used in determining eligibility.<sup>32</sup> Aside from having to fit into one of the categories of aid designated by the Social Security Act, an applicant for, or recipient of public assistance has to meet established requirements, conditions, and limitations as to property and income actually available to him<sup>33</sup> and property and income

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Wilson, *County of Los Angeles v. State Social Welfare Department—A Criticism*, 41 CALIF. L. REV. 499 (1953).

<sup>26</sup>42 U.S.C. §§ 603(a) 5, 606(e) (Supp. IV, 1965—1968).

<sup>27</sup>45 C.F.R. § 233.120, 34 Fed. Reg. 393 (1969).

<sup>28</sup>42 U.S.C. § 606 (e)(2) (Supp. IV, 1965—1968).

<sup>29</sup>*Id.*

<sup>30</sup>45 C.F.R. 233.120(B)(1)(iv), 34 Fed. Reg. 393 (1969). *See also* 42 U.S.C. § 606(e)(1) (Supp. IV, 1965—1968).

<sup>31</sup>Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245 (1965); ten Broek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 STAN. L. REV. 257, 900 (1969) (pts. 1—2), 17 STAN. L. REV. 614 (1965) (pt. 3); Foster & Freed, *Unequal Protection: Poverty and Family Law*, 42 IND. L.J. 192 (1967); Graham, *Civil Liberties Problems in Welfare Administration*, 43 N.Y.U.L. REV. 836 (1968); Sparer, *The Role of the Welfare Client's Lawyer*, 12 U.C.L.A. L. REV. 361 (1965). *See also* R. ELMAN, *THE POORHOUSE STATE* (1966).

<sup>32</sup>*See* Comment, *Non-Need Related Provisions for the Receipt of AFDC*, 9 J. FAMILY L. 101 (1969).

<sup>33</sup>CAL. WELF. & INST'NS CODE §§ 11150—58, 11351—515 (West 1966), *as amended*, (West Supp. 1970).

potentially available to him.<sup>34</sup> Some eligibility requirements have served as incentives for family separation. Many practices and procedures involved in determining whether conditions, requirements and limitations have been fulfilled have raised privacy and search and seizure problems.<sup>35</sup> Other eligibility requirements have the tendency directly or indirectly to regulate the moral behavior of recipients.

Welfare eligibility requirements which have encouraged the separation of families have received much publicity in recent years. President Nixon recently attacked the problem in his nationwide address on welfare reform.<sup>36</sup> To receive aid under the categorical program for aid to families with dependent children, a child must be deprived of parental support or care. The deprivation may be by reason of death, continued absence, or physical or mental incapacity of a parent.<sup>37</sup> The deprivation may also be due to the unemployment of a parent.<sup>38</sup> In most states, a parent who is able to work must accept available employment, even if the employment is insufficient to support his family.<sup>39</sup> In such states, if the income received from employment provides for less than the family could receive from welfare benefits, the father may desert his family to qualify his children for aid, based on deprivation due to the absence of a parent.<sup>39</sup>

Most invasion of privacy and search and seizure violations arise from visits by social workers to a recipient's home<sup>40</sup> and from various procedures involved in verifying the recipient's or applicant's eligibility for aid.<sup>41</sup> The problems involving the home visit were brought to public attention by the notorious "midnight raids",<sup>42</sup> where social workers made surprise early morning or late night visits

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<sup>34</sup>CAL. WELF. & INST'NS CODE §§ 11351—515 (West 1966), *as amended*, (West Supp. 1970).

<sup>35</sup>*See generally*, Comment, *Eligibility Determinations in Public Assistance: Selected Problems and Proposals for Reform in Pennsylvania*, 115 U. PENN. L. REV. 1307 (1967); Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963); Comment, *Pre-Dawn Welfare Inspections and the Right to Privacy*, 44 J. OF URBAN L. 119 (1966); Handler & Rosenheim, *Privacy in Welfare: Public Assistance and Juvenile Justice*, 31 LAW & CONTEMP. PROB. 377 (1966); Note, *Fourth Amendment Application to the Mass Welfare Search*, 18 HASTINGS L.J. 228 (1966).

<sup>36</sup>*See* U.S. NEWS & WORLD REPORT, Aug. 18, 1969, at 78, for the full text of the four major sections of President Nixon's address to the nation on August 8, 1969.

<sup>37</sup>42 U.S.C. § 606(a) (Supp. IV, 1965—1968).

<sup>38</sup>42 U.S.C. § 607(a) (Supp. IV, 1965—1968).

<sup>39</sup>For a case filed challenging such a consequence, see *Cheley v. Burson*, Civil No. 13093 (N.D. Ga. amended complaint filed Sept. 23, 1969), *noted in* CCH POV. L. REP., ¶ 10,763.

<sup>40</sup>*See* 115 U. PENN. L. REV. 1307, *supra*, note 35, at 1333—37.

<sup>41</sup>*Id.* at 1328—32.

<sup>42</sup>Reich, *Midnight Searches*, *supra*, note 35.

to a recipient's home to search for violations of eligibility requirements. In *Parrish v. Civil Service Commission*<sup>43</sup> the court held searches of this type to be unconstitutional when conducted without the consent of the recipient, or when conducted with consent which was obtained by threats to terminate welfare benefits. Even with this decision, however, the constitutional questions involving such searches have not been settled. There are still issues as to when a recipient has given consent and waived his constitutional rights.<sup>44</sup> The problem is particularly acute in rural areas where recipients frequently have language or educational handicaps. There are also unsettled questions as to whether the giving of prior notice is required to visit the home even though there is no search,<sup>45</sup> whether a search warrant is necessary to visit the home when a recipient refuses to allow a caseworker into his or her home,<sup>46</sup> and whether a "blanket" consent, such as may be printed on an application form which the applicant must sign, suffices as a waiver of the constitutional rights.<sup>47</sup>

invasions of privacy. Such problems arise when social workers verify an applicant's or recipient's statements by contacting collateral sources. In the past, these sources have included the applicant's or recipient's neighbors, past employers, landlords, creditors, teachers, doctors, and relatives. In one extreme case, the welfare department even attempted to verify a recipient's statements by a lie detector test.<sup>48</sup> The trend, however, seems to be in making the applicant for, and the recipient of, welfare the primary source of information. In fact, recent federal regulations require that states test a "simplified" method for determining eligibility for the categorical aids.<sup>49</sup> Under the

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<sup>43</sup>57 Cal. Rptr. 623, 425 P.2d 223 (1967). In *Parrish* a social worker was fired for refusing to participate in mass searches of recipient homes in the early hours of a Sunday morning. The court, in reinstating the social worker, stated that "failure to secure legally effective consent to search the homes of welfare recipients rendered the mass raids unconstitutional...[and] even if effective consent had been obtained, the county could not constitutionally condition the continued receipt of welfare benefits upon the giving of such consent." *Id.* at 625, 425 P.2d at 225. For a case upholding Fourth Amendment protections in administrative searches, see *Camera v. Municipal Ct. of the City and County of San Francisco*, 387 U.S. 523 (1967).

<sup>44</sup>44 J. OF URBAN L. 119, *supra* note 35, at 129—32.

<sup>45</sup>Matter of P., *noted in* 4 WELF. L. BULL. 7 (June, 1966).

<sup>46</sup>James v. Goldberg, No. 69 Civil 2448 (S.D. N.Y., Aug. 18, 1969).

<sup>47</sup>See 115 U. PENN. L. REV. 1307, *supra*, note 40, at 1331—33.

<sup>48</sup>The Court did not compel the recipient to undergo a polygraph test to determine the truth of information she supplied as to the identity of her illegitimate child's father, because the evidence showed that the recipient, aside from the lie detector test, had cooperated. *County of Contra Costa v. Social Welfare Board*, 229 Cal. App. 2d 762, 40 Cal. Rptr. 605 (1964).

<sup>49</sup>45 C.F.R. § 205.20, 34 Red. Reg. 1145, (1969). If the testing results are favor-



simplified procedure the welfare agency must accept “the statements 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.”<sup>50</sup> Even under the new method there may be problems of invasion of privacy and its corollary problems of consent because the welfare agency is required to obtain additional substantiation or verification of information if the statements of the applicant or recipient “indicate to a prudent person that further inquiry should be made.”<sup>51</sup> The new simplified method also will not apply to all eligibility factors. It will not apply to determinations of whether training or employment was refused for “good cause” or to procedures beyond obtaining a mere statement, such as determinations as to whether an individual is blind or determinations regarding permanent and total disability.<sup>52</sup>

Invasion of privacy and illegal search and seizure are not the only objections arising from eligibility requirements. Many recipients complain that some eligibility requirements have the tendency, directly or indirectly, to regulate their moral behavior. One of the practices most often cited as tending to regulate moral behavior has been the use of the “suitable home” rule. If the state uses a “suitable home” test, the welfare agency may deny or terminate aid to a family whose home is considered unsuitable for raising children.<sup>53</sup> If a family’s aid is terminated, however, alternative provisions must be made for the adequate care and assistance of the children.<sup>54</sup> This test has been used to regulate the moral and sexual behavior of the mother and to prevent the birth of illegitimate children.<sup>55</sup> In the case of *King v. Smith*,<sup>56</sup> the United States Supreme Court held that the state cannot deny assistance to a child based on the “mother’s alleged immorality or to discourage illegitimate births.”<sup>57</sup> In the case of *In re*

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able the earliest effective dates for the new system are: Oct. 1, 1969 (OAA); Jan. 1, 1970 (AM, ATDP); April 1, 1970 (AFDC), 45 C.F.R. § 205.20 (a)(2).

<sup>50</sup>45 C.F.R. § 205.20(c).

<sup>51</sup>45 C.F.R. § 205.20(a)(3).

<sup>52</sup>*Id.*

<sup>53</sup>Federal guidelines have recommended that the “suitable home” rules should not be conditions to public assistance eligibility. U.S. DEP’T OF HEALTH, EDUCATION, & WELFARE, FEDERAL HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION § IV—3435.4. [hereinafter cited as FED. HANDBOOK]. For an opposite view, see IOWA ATTY. GEN. OP. No. 69—2—10, Feb. 24, 1969.

<sup>54</sup>42 U.S.C. § 604(b) (1964).

<sup>55</sup>See Handler & Rosenheim, *supra* note 35, at 388.

<sup>56</sup>392 U.S. 309 (1968).

<sup>57</sup>*Id.* at 324.

*Cager*,<sup>58</sup> a Maryland court determined that child neglect proceedings were being instituted "...not to serve and perpetuate the best interests of the children but rather impermissibly to use the children as pawns in a plan to punish their mothers for their past promiscuity and to discourage them and other females of like weaknesses and inclinations from future productivity."<sup>59</sup> The court, following the reasoning of the *King* case, held that the welfare agency cannot find that a child lives in an unstable moral environment or that he is neglected solely because he lives with a mother who has had an illegitimate child.

The "substitute father" or "man-in-the-house" rule has had an even harsher regulatory effect on the moral behavior of welfare recipients. Under this rule, aid to needy families with dependent children may be denied if the mother's non-marital relationship with a male is such that responsibility for her children can be imputed to the male, as if he were her husband. Prior to the decision in the *King* case, a determination of whether a child had a "substitute father" could be based merely on the man's relationship with the mother.<sup>60</sup> In some states, a man was considered to be a child's "substitute father" merely if he cohabitated with the child's mother, even when he did not live at the home.<sup>61</sup> The court in the *King* case, however, stated that the term "parent" includes only those persons who are legally obligated to support the child.<sup>62</sup> Following the *King* case, a new federal regulation adopted the policy that the presence in the home of a "substitute parent" or "man-in-the-house", or any individual other than a natural, adoptive, or step-parent, who is legally obligated to support the child, is not an acceptable basis for a finding of ineligibility.<sup>63</sup> The regulation further provided that only such income as is actually available for current use on a regular basis be considered in establishing

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<sup>58</sup>248 A.2d 384 (Md. 1968).

<sup>59</sup>*Id.* at 389.

<sup>60</sup>An intimate relationship between an unmarried couple and recurrent presence of the man in the woman's home qualified him as an adult male assuming the role of spouse. *People v. Ford*, 236 Cal. App. 2d 438, 46 Cal. Rptr. 144 (1965).

<sup>61</sup>Sparer, *Social Welfare Law Testing*, 12 PRAC. LAW. 13, 16—17 (No. 4, April, 1966).

<sup>62</sup>392 U.S. at 327. In Comment, *Welfare Law — Aid to Dependent Children and the Substitute Parent Regulation — The State Loses a Scapegoat, the "Man-in-the-house,"* 18 DE PAUL L. REV. 897 (1969), the author examines the reduction of family assistance on the basis of contributions of income from a "man-in-the-house" in view of the *King* case. For a discussion of the *King* case and "man-in-the-house" rules, see Comment, *Poverty Law — King v. Smith and "Man-in-the-home"*, 52 MARQ. L. REV. 422 (1969).

<sup>63</sup>45 C.F.R. § 203.1 (1969). For a discussion of the new regulations and the *King* case, see Comment, *Man-in-the-House Rules After King v. Smith: New HEW Regulations*, 14 WELF. L. BULL. 19 (1968).

financial eligibility. The problem has not been eliminated<sup>64</sup> however, since some states without the “substitute father” or “man-in-the-house” rules have rules which are more subtle, “but equally damaging to welfare recipients.”<sup>65</sup> One of these states is California.

California had a statute obligating an adult male assuming the role of a spouse (MARS) to support the mother’s children to the extent he was able, although he was not legally married to her.<sup>66</sup> The California legislature recently amended the statute and added a new section.<sup>67</sup> It obligates an “unrelated male” who resides with a family applying for, or receiving aid, to make a financial contribution to the family in an amount not less than it would cost him to provide himself with an independent living arrangement. On its face, the statute seems to go further than MARS since it does not appear to require a spouse-like relationship. Prior to the adoption of the new statute, the cases of *Lewis v. Stark* and *Percy v. Montgomery*<sup>68</sup> challenged the California MARS rule on the grounds that it violated the new federal regulations. Family grants were being reduced by the amount a MARS was able to contribute and not on what he actually contributed to the family.<sup>69</sup> The court rejected the argument. The court found that the California MARS rule did conflict with the federal regulations, but held that the federal regulations violated the Social Security Act’s requirement that the states consider, in determining need, “any other income and resources of any child.”<sup>70</sup> The court reasoned that the state must consider such male’s income because under California law such income is a resource of the child. For “California to ignore this resource would be to violate rather than to conform to the Social Security Act.”<sup>71</sup> The court also ruled that the federal regulations were an intrusion into the state’s power to determine who is needy.<sup>72</sup> Following the decision, but prior to the final judgment, the Department of Health, Education and Welfare (HEW) filed a motion to intervene on the ground that the plaintiffs could not adequately represent the interest of HEW in defending the validity of the regulations declared

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<sup>64</sup>See Note, *Social Welfare Law After the “Man-in-the-House”, What? — Is King v. Smith the Answer*, 15 HOWARD L.J. 265 (1969).

<sup>65</sup>*Id.* at 279—80.

<sup>66</sup>CAL. WELF. & INST’NS CODE § 11351 (West 1966).

<sup>67</sup>CAL. WELF. & INST’NS CODE § 11351.5 (West Supp. 1970).

<sup>68</sup>Civil Nos. 50238 and 50285 (N.D. Cal., Dec. 23, 1968). For the text of the opinion, see 2 CCH POV. L. REP., ¶ 9299.

<sup>69</sup>45 C.F.R. § 203.1 (1969).

<sup>70</sup>42 U.S.C. § 602(a)(7) (1964), *as amended*, (Supp. IV, 1965—1968).

<sup>71</sup>2 CCH POV. L. REP., ¶ 9299.

<sup>72</sup>42 U.S.C. § 602(a) (1964), *as amended*, (Supp. IV, 1965—1968).

invalid. The motion was denied.<sup>73</sup> An appeal to the United States Supreme Court is contemplated.<sup>74</sup>

### *C. The Problem With Eligibility Requirements*

The creation of the eligibility process reflects a social judgment that society will not assist all the poor.<sup>75</sup> The eligibility tests were designed to distinguish “between those persons who are able and expected to work, and those who are not.”<sup>76</sup> Implicit in all the public assistance tests is that “society must be protected against the loafer,”<sup>77</sup> the person who can work and take care of himself and his family but is unwilling to do so. This principle has affected the administration of welfare programs. At times, the eligibility process has made welfare administration appear more concerned with when assistance should be given than with how the individual can be best assisted. The eligibility process has caused the development of a vast administrative structure to screen and rescreen families for eligibility,<sup>78</sup> with little progress being made toward coping directly with the challenge of poverty--returning the poor to a productive role in society.<sup>79</sup>

The eligibility process is inefficient; it not only has failed, it has done considerable harm. It has deprived recipients of self-respect and dignity and has created mistrust among the poor. Because considerable administrative effort is expended in ferreting out the unqualified recipient or the “cheater,” current welfare systems manifest a mistrust of the poor. The poor return an equal mistrust of the welfare

<sup>73</sup>2 CCH POV. L. REP., ¶ 10,107.

<sup>74</sup>For a new case challenging the MARS rule, see *Beck v. Montgomery*, (Cal. Super. Ct., Sacramento County, filed Oct. 17, 1969), noted in 3 CLEARINGHOUSE REV. 247 (Jan. 1970).

<sup>75</sup>Of the persons officially classified as poor, approximately 75 percent receive no public assistance. *Hearings Before the Sub-Comm. on Fiscal Policy of the House Joint Economic Comm.*, 90th Cong., 2d Sess. Vol. II, Appendix Materials, at 456 (1968) [hereinafter cited as *Hearings on Fiscal Policy*].

<sup>76</sup>C. GREEN, *NEGATIVE TAXES AND THE POVERTY PROBLEM* 6 (1967).

<sup>77</sup>*Id.* at 7.

<sup>78</sup>States are required to redetermine eligibility at least every three months for the AFDC-UP program, every six months in other AFDC cases and every twelve months in all other categorical programs. FED. HANDBOOK § IV-2200(d).

<sup>79</sup>“Assemblyman Burton: . . . I get very concerned with some of the rules . . . [that say when you] go on welfare they want you to sell your car, get rid of your insurance policy; they want you to do this or they want you to do that, so they are trying to make you poor so it is more difficult to get off whereas if they let you keep some of your resources it might be easier for you to get off welfare . . . I think we trap them, because we want to keep them there. It gives the Bureaucracy something to do to justify its existence.” *Hearings on Public Assistance Grants*, *supra* note 2, at 153.

system and many other social institutions. Continuous social worker scrutiny, however, is not the only basis for mistrust. The present system has an inherent weakness: it is easily vulnerable to abuse and error. Current welfare systems expose the poor to random and inconsistent administration by county, state and local governments. Even though the standard of the eligibility process “demands the ability to investigate social behavior and to evaluate real and circumstantial evidence”,<sup>80</sup> the rules permit or encourage arbitrary and harsh decision-making.<sup>81</sup> Local bias or social worker inexperience can easily result in faulty eligibility determinations.<sup>82</sup>

### III. RURAL POLITICAL AND ECONOMIC PRESSURES

#### *A. Local Administration and the Rural Setting*

State governments are not required to adopt the categorical assistance programs authorized by the Social Security Act. If, however, a state chooses to accept federal funds to supplement local welfare programs, a “state plan” for the administration of the assistance programs must be approved by the Department of Health, Education and Welfare.<sup>83</sup> The “state plan” consists of a host of material, including statutes, regulations, manuals, bulletins and policies adopted by the state. The plan does not consist of a detailed document setting out the precise standards which will be used to operate the assistance program. On approving the state plan, the federal government makes a general allocation of funds to the state. Each state has the responsibility of administering its welfare programs utilizing the federal funds. The state government may directly administer the program or it may delegate such responsibility to political subdivisions within the state. Most states, including California, have used the latter method.<sup>84</sup>

A degree of local administration is necessary for the efficient distribution of welfare services. Local officials can better understand

<sup>80</sup>115 U. PENN. L. REV. 1307, *supra* note 35, at 1326.

<sup>81</sup>*See* Sparer, *supra* note 61, at 25.

<sup>82</sup>*Id.*

<sup>83</sup>42 U.S.C. § 1316 (1964), *as amended*, (Supp. IV, 1965—1968).

<sup>84</sup>*See* U.S. DEPT HEALTH, EDUCATION, & WELFARE, BUREAU OF FAMILY SERVICES, CHARACTERISTICS OF STATE PUBLIC ASSISTANCE (Public Assistance Rep. No. 50, 1964) [hereinafter cited as CHARACTERISTICS]. *See* Wedemeyer & Moore, *The American Welfare System*, 54 CALIF. L. REV. 326, 334—39 (1966), for a discussion of the relation of local to state welfare offices. *See also* W. VASEY, GOVERNMENT AND SOCIAL WELFARE 441—51 (1963).

the particular problems of local recipients, and thus are better able to maximize the utilization of available money.<sup>85</sup> Local officials also are able to gain community involvement and support for local programs by developing a proprietary interest in these programs.<sup>86</sup> Local administration, however, is not without its weaknesses. There are frequently undesirable variations in methods, philosophies and objectives of welfare administration.<sup>87</sup> Local officials frequently become more attuned to local government policies and pressures than to those of the state or federal government. Local government units also may be too small for efficient administration of the programs.<sup>88</sup>

The inadequacies of local control are more visible in rural areas, since these areas are dominated by a narrow power structure.<sup>89</sup> In rural areas, political and economic problems have polarized around two interest groups: the large farmer and the farmworker. Such polarization has not occurred in urban areas since these areas still contain a multitude of interest groups with various levels of influence. The political and economic pressures generated by the two rural interest groups will obviously effect any governmental entity which is locally controlled. The county welfare departments in rural areas quite naturally cannot escape this phenomenon. In fact, welfare has a double handicap because there is always an additional conservative reaction to giving aid to the poor.<sup>90</sup> The conservative reluctance to aid the poor, coupled with the heavily weighted influence of the large farmer in rural communities, has caused many undesirable administrative practices within local welfare departments.

Not all rural county welfare departments are dominated by large grower interests, but many of them are indirectly pressured into considering their interests.<sup>91</sup> Much of the pressure on local welfare

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<sup>85</sup>W. VASEY, *supra* note 84, at 442.

<sup>86</sup>*Id.*

<sup>87</sup>See Horowitz & Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State*, 15 U.C.L.A. L. REV. 787 (1968). See also Wedemeyer & Moore, *supra* note 84, at 326, 335.

<sup>88</sup>See Wedemeyer & Moore, *supra* note 84, at 326, 335.

<sup>89</sup>"[W]e find that, generally speaking, a rural area is dominated by a narrow power structure. The economics are under control of a few families or a few people. This is one of the important facts that must be recognized... These areas contain many elements which can be characterized as a hangover from the feudal system. Some of the worst elements of the factory town, which has pretty much disappeared from urban centers, still exist in many of the rural areas of the country." PROCEEDINGS ON LAW AND POVERTY, *supra* note 17, at 111—12.

<sup>90</sup>*Hearings on Rural Poverty Before the Nat'l Advisory Comm. on Rural Poverty* 280 (Hearings held in Memphis, Tenn., Feb. 2—3, 1967).

<sup>91</sup>Interview with Harold Simmons, Deputy Director of the California Department of Social Welfare, at the Department of Social Welfare, Sacramento, Jan. 1969.

departments originates in the county board of supervisors.<sup>92</sup> In California, the boards are granted substantial powers over decisions concerning local welfare programs, including the power to appoint the director and other staff necessary to administer the programs.<sup>93</sup> Consequently, local welfare administrators may be directly responsible to the county boards of supervisors, which may consist of large growers or be dominated by farm employer groups.<sup>94</sup> In such circumstances, personnel in local departments may be unable to implement goals and policies contrary to dominant local interests.<sup>95</sup>

In many rural counties there exists an atmosphere in which it is very easy for local governmental entities to become over-responsive to the farmers' needs. Social institutions are sometimes used to fulfill the needs of the farmer even when detrimental to the needs of the rural poor. These practices have affected the rural poor and have made them feel that institutions which are supposed to provide them with services, work against and not for them. Often their feelings are justified. Schools in rural areas, for example, are sometimes closed early because of harvest needs of the farmer,<sup>96</sup> even though education for the children of the rural poor is vitally important.<sup>97</sup> A primary example of the over-responsiveness to the farmer has been the use of welfare programs to fulfill employment needs of the farmer instead of fulfilling of the needs of the recipient. In recent years, this theory of welfare administration has been reflected in the practice of referring recipients to farmers for farm labor work, through the use of the unemployed parent provisions of the AFDC program.<sup>98</sup> The motivations for the practice are not new; they have historical roots in practices used by large farm organizations in the 1930's.

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<sup>92</sup>*Id.*

<sup>93</sup>CAL. WELF. & INST'NS CODE §§ 10801—02 (West 1966), *as amended*, (West Supp. 1970). *See also* 51 OPS. CAL. ATTY. GEN. 243, 244 (1968).

<sup>94</sup>*See note 104 infra.*

<sup>95</sup>*Cf. Wedemeyer & Moore, supra note 84, at 326, 336.*

<sup>96</sup>*See Vega v. County of Madera*, Civil No. 16004 (Cal. Super. Ct., Madera County, filed May 27, 1968). Schools were closed in the Madera Unified School District for a week because of the emergency need for workers in the grape harvest. 2 C.E.B. LEGAL SERVICES GAZETTE 275 (1968); 14 WELF. L. BULL. 1 (Sept. 1968).

<sup>97</sup>The importance of the education of the rural poor is pointed out in F. SCHMIDT, RATIONALIZING THE FARM LABOR MARKET: THE CASE FOR SUPPLEMENTAL WAGE PAYMENTS 13 (UCLA Institute of Industrial Relations, Reprint No. 160, 1966) [hereinafter cited as SUPPLEMENTAL WAGE].

<sup>98</sup>Bernstein, *Few on Welfare Rolls Found for Farm Jobs—Court Hearing Set Next Week on Reagan's Move to Use Prison Labor to Harvest Crops*, Los Angeles Times, Oct. 9, 1967, pt. 1, at 3, col. 5. The article describes the State's effort to get welfare recipients and prisoners to work for growers who claimed a labor shortage.

*1. Historical Perspective*

In the early 30's, the Federal Emergency Relief Administration followed a liberal policy of giving relief to farmworkers. It even granted aid to workers on strike, although such assistance undoubtedly had helped prolong some strikes.<sup>99</sup> The liberal policy came under intense and persistent pressures from farm groups.<sup>100</sup> In 1935, federal assistance was withdrawn, and California, under the California Unemployment Relief Act of 1935, established its own State Relief Administration (S.R.A.). Under the S.R.A., farm employers attempted to obtain low government relief payments with no relief during harvest season. The rationale was that since employers to obtain workers would have to pay wages that are at least equivalent to what the government was paying on relief, relief payments should be low. Furthermore, if relief was denied during the harvest, the worker would have to accept employment no matter what wages were offered. Administrators of S.R.A. were easily susceptible to farm employer demands since the Unemployment Relief Act of 1935 had no guiding policy. Because of the pressures exerted, the system was conservative and aligned with the notion of providing sufficient farm labor at a minimum wage level under the "prevailing wage" concept. Relief would be denied wherever work was available under conditions that were prevailing at the time.<sup>101</sup> Through 1935 and the following few years, thousands of workers were struck from the relief rolls and ordered into the fields under what is now known as the "Work or Starve Order".<sup>102</sup> Many farm employers also demanded that relief programs be administered through the counties, that lists of recipients be published, and that payments in food and rent be substituted for cash payments.<sup>103</sup> The strongest pressure was toward gaining local control of the relief agencies.<sup>104</sup> In 1940 and 1941 legislation was introduced to weaken the S.R.A., but was blocked by Governor Olsen's veto.<sup>105</sup> Pressures mounted against the Olsen administration. As a

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<sup>99</sup>C. CHAMBERS, CALIFORNIA FARM ORGANIZATIONS 83 (1952).

<sup>100</sup>*Id.* at 85.

<sup>101</sup>*Id.* at 84.

<sup>102</sup>*Id.* at 86.

<sup>103</sup>*Id.* at 93—94, 95—96.

<sup>104</sup>"Farm employers had always wanted the granting of relief to be controlled and administered by county officials (using state and federal funds, of course) under the direction of county boards of supervisors. County supervisors were very often under the complete domination of farm employer groups; they always considered the interests of the taxpayer first and above all else; they were hard-headed men who had little sympathy with 'relievers' and 'loafers'; and they could be relied upon to be sensitive to the need of farm employers for harvest hands." *Id.* at 92.

<sup>105</sup>*Id.* at 95, 96.



result, relief appropriations were drastically cut; eligibility requirements were increased; and finally, the State Relief Administration was abolished altogether.<sup>106</sup>

## *2. The Creation of the Unemployed Parent Provision and Its Implementation In Rural Counties*

California agriculture, despite increased mechanization, needs a ready supply of farmworkers. The end of the Bracero program<sup>107</sup> abruptly cut off a major source of this labor. It was the need for cheap labor in the 1930's that motivated the use of relief recipients in the fields. Accordingly, in 1961 when Congress passed Public Law 87—31, amending Title IV of the Social Security Act<sup>108</sup> allowing federal participation in aid to dependent children of unemployed parents (AFDC-UP), it seemed inevitable, in light of history, that the welfare departments would again have a significant impact on farm labor.

Prior to creation of the AFDC-UP category of public assistance, farm labor families in need of financial help due to unemployment of a parent, had to rely mainly on local general assistance programs. It was almost predictable that the farm laborer would have to rely on general assistance some time during the year, because full employment was not available throughout the year. This was true regardless of how well he planned the use of his savings, because invariably unexpected weather conditions and illness would deplete such reserves. General assistance provided less money and benefits than did aid under categorical assistance, because the money needed to finance general assistance came entirely from the state and county without any reimbursement from the federal government.<sup>109</sup>

Despite the inequities of general assistance, however, California was not too quick to adopt the AFDC-UP program, even though it was to be partially financed by the federal government. The chief concerns over the adoption of AFDC-UP brought out by the County Supervisors Association, were fears that the program would increase county costs, increase dependency of able-bodied people, and would result in a loss of a ready supply of labor particularly in agricultural districts.<sup>110</sup> In January of 1963, however, the Welfare Study Commis-

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<sup>106</sup>H. SIMMONS, WORK RELIEF TO REHABILITATION 234 (1969).

<sup>107</sup>Act of Dec. 13, 1963, Pub. L. No. 88—203, 77 Stat. 363.

<sup>108</sup>75 Stat. 75 (1961), *as amended*, 42 U.S.C. § 607 (1964), *as amended*, (Supp. IV, 1965—1968).

<sup>109</sup>For several case histories exemplifying the situation, see H. SIMMONS, *supra* note 106, at 141—46.

<sup>110</sup>*Id.* at 140.

sion, after relieving the counties of some expenditures in the area of medical care, presented a report in favor of AFDC-UP.<sup>111</sup> In the same year, the Legislature added the unemployed parent and work experience and training provisions to the Welfare and Institutions Code.<sup>112</sup>

The implementation of AFDC-UP on the county level created many legal problems, most notably in what constituted "good cause" to refuse employment.<sup>113</sup> The statutes specified that any available employment must be accepted unless there is "good cause" to refuse. To the farmer, farm labor was legitimate employment. For the recipient, however, the inadequacies of farm labor were not conducive to bringing him out of poverty. The rural employer was primarily interested in obtaining a form of cheap labor. This was quite contrary to the interest of the welfare recipient (and the stated interest of the Department of Social Welfare) to obtain meaningful work or training which would improve his skills and help him to join a viable work force. The conflict of interest between the needs of the rural employer and the needs of the recipient created several practices which were contrary to the intentions of the AFDC-UP program. In Sacramento County, for example, it was felt that while farm labor was available, men able to work should be placed on farm jobs and not on work-training projects. To fill the needs of farm employers, the county welfare director, at the request of the Advisory Commission to the Sacramento County Board of Supervisors, adopted a policy which would force "able-bodied" men into farm labor by deducting their anticipated income in advance.<sup>114</sup> The State Department of Social Welfare ruled that such action was illegal. There were other cases in which welfare recipients were removed from work-training assignments or from welfare rolls to meet the requests of farmers.<sup>115</sup> In *Vega v. County of Madera*,<sup>116</sup> plaintiffs, composed of a class of children over the age of ten and their parents, claimed that their AFDC assistance

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<sup>111</sup>*Id.* at 141, 147—48.

<sup>112</sup>CAL. WELF. & INST'NS CODE §§ 11300—08 (West 1966), as amended, (West Supp. 1970).

<sup>113</sup>Lorenz, *The Application of Cost-Utility Analysis to the Practice of Law: A Special Case Study of the California Farmworkers*, 15 KAN. L. REV. 434—35 (1967). Similar problems exist under the 1967 Amendments to the Social Security Act which consolidated the old programs into a new program called Work Incentive Program (WIN). See CAL. WELF. & INST'NS CODE §§ 11300—08, in particular, § 11304 and § 11308 (West Supp. 1970).

<sup>114</sup>H. SIMMONS, *supra* note 106, at 187.

<sup>115</sup>*Id.*; see also Interview with Simmons, *supra* note 91.

<sup>116</sup>Civil No. 16004 (Cal. Super. Ct., Madera County, filed May 27, 1968); 2 C.E.B. LEGAL SERVICES GAZETTE 275 (1968); 14 WELF. L. BULL. 1 (Sept. 1968).

had been terminated after the children refused to work in the grape fields. The schools were closed temporarily because of the need for workers in the grape harvest. Plaintiffs alleged that requiring children to work in the fields under unsanitary conditions violated child labor laws and violated the involuntary servitude section of the Thirteenth Amendment to the United States Constitution.<sup>117</sup>

When AFDC-UP was established it seemed natural that some cooperative interaction would occur between local welfare departments and the departments of employment. Such cooperation between the State Department of Social Welfare and the State Department of Employment was and still is allowed by statute.<sup>118</sup> Cooperative action between the two agencies, however, has not gone without some criticism. Most critics contend that the Department of Employment is strictly employer oriented and not equipped to serve the needs of welfare recipients. The validity of such criticism is particularly apparent in the rural setting. In rural California, the main employment agency is the Farm Labor Office of the Department of Employment. This office was established specifically to provide for jobs in agriculture. This is unique, for normally employment offices respond to a much broader spectrum of employment needs.

In his book, Harold Simmons, a Deputy Director of the California State Department of Welfare, gives a startling example of improper farm labor referral practices which arose out of the cooperation between a welfare department and a Farm Labor Office in the California County of Alameda.<sup>119</sup>

With the termination of the Bracero program in 1964, the Farm Labor Office in Alameda County found it increasingly difficult to obtain domestic farmworkers. In Alameda County, the particular problem was to obtain workers to pick strawberries. The Farm Labor Office in this county notified the County Welfare Department of its labor needs, as it had in previous years, in the hope that AFDC-UP referrals could be used to increase the available source of farm laborers. The County Welfare Director, either because of pressures exerted on him or because of his personal convictions, made a commitment to the Farm Labor Office that the Welfare Department would meet the needs of the strawberry growers by referring 300 recipients on AFDC-UP and general assistance aid.<sup>120</sup> This commitment was made without

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<sup>117</sup>The Superior Court sustained defendant's general demurrer in the *Vega* case, but an appeal by plaintiffs is contemplated.

<sup>118</sup>CAL. WELF. & INST'NS CODE § 11300 (West Supp. 1970).

<sup>119</sup>For a comprehensive study of the administrative practices of the Alameda County Welfare Department in conjunction with AFDC-UP, see H. SIMMONS, *supra* note 106, at 257—83.

<sup>120</sup>H. SIMMONS, *supra* note 106, at 268.

proper consideration and protection of the needs and rights of the welfare recipients and without careful consideration of screening and evaluation for job referral.<sup>121</sup> To implement its commitment, the Welfare Department sent 300 letters to AFDC-UP recipients telling them that farm labor was available and that they should contact the Farm Labor Office unless they wished to lose their eligibility for aid.<sup>122</sup> This action was in violation of various department bulletins which outlined definite procedures to be used in referrals.<sup>123</sup> The use of mass referrals was a violation of State Welfare Department regulations which required that recipients be referred individually to a specific job at a specific wage<sup>124</sup> and that they be screened individually to determine their physical and mental ability to do the work.<sup>125</sup> The consequences of the actions of the Alameda County Welfare Department were predictable from the beginning. Since the recipients were never checked for qualifications, many of the recipients were incapable of doing the available farm work.<sup>126</sup> The recipients, however, were blamed as being lazy and wanting aid for nothing.<sup>127</sup> The real reason for failure was the overemphasis on farm labor placement.

### *3. Concluding Remarks on Farm Labor Referrals and the Rural Recipient*

Jobs are a legitimate and necessary goal if the poor are to get off welfare rolls. It is doubtful, however, that the mere placing of persons in work without properly considering their needs will eliminate poverty. Recipients must be placed in jobs with the intent of useful rehabilitation and not merely to fulfill employer needs. This would appear to be the primary intent of the new work incentive statutes.<sup>128</sup> Farm labor, even though legitimate employment, currently does not meet the employment needs of the poor. The recipient who is able to work must obtain employment that will help him out of his poverty, not employment that will keep him living in conditions which breed

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<sup>121</sup>*Id.*

<sup>122</sup>*Id.* at 258, 269.

<sup>123</sup>*Id.* at 259—60.

<sup>124</sup>*Id.* at 260.

<sup>125</sup>*Id.*

<sup>126</sup>*Cf.* F. Schmidt, Institute of Industrial Relations, U.C.L.A., *After the Bracero: An Inquiry into the Problems of Farm Labor Recruitment* 47—57, Oct. 1964 (an unpublished report submitted to the Dep't of Employment of the State of California).

<sup>127</sup>*See* CALIFORNIA FARMER, June 6, 1964 at 12.

<sup>128</sup>42 U.S.C. §§ 602(a)(19)(A), 630—44 (Supp. IV, 1965—1968). For a discussion of the new work incentive program, see Comment, *Work as a Condition of Welfare: the WIN Program*, 44 N.Y.U.L. REV. 775 (1969).

poverty. With the present increase of mechanization in agriculture, there seems too little chance that farm labor will be of any permanent benefit to the welfare recipient.

The law presently allows the welfare recipient to reject employment if he has "good cause to refuse."<sup>129</sup> Although it is unclear what constitutes "good cause," federal regulations provide several factors which might be considered: the ability of the unemployed person to do the job, whether the employment is hazardous, whether the payment is less than the prevailing wage rates, or whether there is excessive distance to be traveled.<sup>130</sup> The standard for "good cause", however, is left to the state.

A case recently filed by California Rural Legal Assistance could have significant impact on the welfare provisions which require "good cause" to refuse employment. In *Munoz v. California Department of Employment*,<sup>131</sup> the plaintiff was denied unemployment insurance benefits because he refused to perform farm labor under unsuitable and illegal conditions. The plaintiff contends that many farm labor employers violate field health and sanitation laws.<sup>132</sup> The plaintiff further contends that the Farm Labor Office is prohibited from referring any farmworker to any grower who is in violation of any federal, state or local law, including health and sanitation laws. Recent amendments to the California Health and Safety Code prohibit the Farm Labor Office from referring workers to any farmer who is in violation of state sanitation laws.<sup>133</sup> A decision favorable to the plaintiff in *Munoz* would support the argument that welfare recipients should not be required to perform hazardous and unsafe farm employment.

### *B. Correcting Problems of Local Administration*

Local political and economic pressures should have no effect on the administration of the welfare program, since the state government is required to supervise the county welfare departments.<sup>134</sup> State supervision, however, cannot insulate local departments from local pressures when public assistance statutes and regulations governing

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<sup>129</sup>CAL. WELF. & INST'NS CODE §§ 11304(a), 11308 (West Supp. 1970).

<sup>130</sup>FED. HANDBOOK § IV—3424.23.

<sup>131</sup>Civ. No. 191631 (Cal. Super. Ct., Sacramento County, petition for writ of mandate filed April 14, 1969); see Comment, *Referrals to Unlawful Labor Conditions*, 14 WELF. L. BULL. 17 (Sept. 1968).

<sup>132</sup>CAL. HEALTH AND SAFETY CODE §§ 5474.20—74.31 (West Supp. 1970).

<sup>133</sup>CAL. HEALTH AND SAFETY CODE § 5474.30 (West Supp. 1970).

<sup>134</sup>CAL. WELF. & INST'NS CODE § 10600 (West 1966).

welfare administration use broad, discretionary terms, such as "reasonable,"<sup>135</sup> and "without good cause."<sup>136</sup> Such statutory language permits local misinterpretation, thus subverting the true intent of the law. An example of the difficulty in correcting such practices occurred in the California County of Sutter.

Sutter County is a small, rural county located in the center of California's Sacramento Valley. The residents tend to be politically conservative. Sutter was one of the few California counties that favored Barry Goldwater in the 1964 Presidential election, and Ronald Reagan won overwhelmingly in the county in the 1966 California gubernatorial election, even though voter registration in the county is almost equal in the two major parties.<sup>137</sup>

According to the *Administrative Review of Sutter County*,<sup>138</sup> a report made by the California State Department of Social Welfare, Sutter County has a high level of poverty and deprivation compared to the rest of the state. In 1965, approximately 30 percent of the families residing in Sutter County had incomes falling below the \$4,000 "poverty-stricken" level used by the federal government. The statewide average of "poverty-stricken" was 21.4 percent. Another 24 percent of Sutter's population had incomes in the "deprivation" level of \$4,000 to \$6,000 per year. Seventy-eight and two tenths percent of minority group families fell below the deprivation level and 58.4 percent of these fell below the poverty level.<sup>139</sup> Unemployment was exceedingly high in Sutter County.<sup>140</sup> The residents also had less formal education than the statewide median: 11.2 years for Sutter residents compared to a statewide median of 12.1 years.<sup>141</sup> In startling contrast to these statistical facts, it is interesting to note that:

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<sup>135</sup>CAL. PSS MANUAL §§ 41—313.261, 41—317.11, 42—551.1, 42—551.2.

<sup>136</sup>CAL. WELF. & INST'NS CODE § 11308 (West Supp. 1970).

<sup>137</sup>Lemenager & Tuscano, Community Work and Training Programs in Sutter County, Law and the Underprivileged, May 21, 1968 (unpublished paper on file with the U.C.D. LAW REVIEW) [hereinafter cited as Lemenager].

<sup>138</sup>STATE OF CALIFORNIA, DEP'T OF SOCIAL WELFARE, ADMINISTRATIVE REVIEW OF SUTTER COUNTY 21, 23 (Administrative Review Bureau 1966) [hereinafter cited as ADMINISTRATIVE REVIEW].

<sup>139</sup>ADMINISTRATIVE REVIEW 21; see also Lemenager 3.

<sup>140</sup>In the two major cities of the County, Yuba City and Marysville, unemployment ranged from 5.1 percent to 13.8 percent for an average of 10.4 percent, while the state average was 5.9 percent. STATE OF CALIFORNIA, DEP'T OF EMPLOYMENT, TECHNICAL PAPER, Series LF 6.3, cited in ADMINISTRATIVE REVIEW 21; see also Lemenager 3.

<sup>141</sup>STATE OF CALIFORNIA, CALIFORNIA STATISTICAL ABSTRACT 1964, Table L—2, at 151, cited in ADMINISTRATIVE REVIEW 20; see also Lemenager 2.

On June 1, 1965, the Sutter County Economic Opportunity Act Advisory Committee submitted its report on the need of federal assistance under the Economic Activity Act of 1964 to the Board of Supervisors. The Committee reported that federal assistance was unnecessary, that there was no poverty in Sutter County, or at least, not serious enough to warrant correction. . . .<sup>142</sup>

The political and economic climate of Sutter County encouraged administrative practices by the welfare department which improperly denied welfare benefits to qualified applicants. These practices went unchallenged because of a lack of interest within the community. It was not until early 1967, when California Rural Legal Assistance (CRLA) opened an office in the County,<sup>143</sup> that there seemed to be hope of correcting abuses and forcing compliance with the letter and spirit of the welfare statutes. CRLA brought legal action against the local welfare department in approximately 30 cases,<sup>144</sup> in spite of accusations by the local welfare department that it was being harassed.<sup>145</sup> A barrage of criticism was directed at CRLA.<sup>146</sup> Political pressures on Congressmen representing rural districts resulted in a request to the federal General Accounting Office (GAO) that it investigate the activities of CRLA, including charges that CRLA harassed the Sutter County Welfare Department. The report by the GAO indicated that high California officials, as well as CRLA, were critical of the Sutter agency for its repeated violations of accepted administrative practices. The report concluded that CRLA was not engaging in harassment tactics.<sup>147</sup>

The GAO report was not the only indication that Sutter County

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<sup>142</sup>H. SIMMONS, *supra* note 106, at 183. See also Lemenager 3—4.

<sup>143</sup>1 C.E.B. LEGAL SERVICES GAZETTE 29 (1967).

<sup>144</sup>Letter from former Directing Attorney, California Rural Legal Assistance, Marysville Office, to the U.C.D. Law Review, Feb. 20, 1970.

<sup>145</sup>See Legorio, *Bicounty CRLA Chief Forsees Greater Success Despite Pressure, Criticism*, Sacramento Bee Jan. 28, 1968 at B6, col. 1. See also SIMMONS, *supra* note 106, at 249.

<sup>146</sup>These actions against the welfare department in Sutter County had state and national political repercussions. When legal actions were being filed against Sutter County Welfare Department, CRLA obtained an injunction against the California Governor's Medi-Cal cutbacks. The two challenges to executive authority brought an angry response by the Governor. He claimed that public funds should not be used by one governmental agency to attack another. Nationally, he was joined by California's Senator Murphy who introduced an amendment to the poverty program bill that would have prevented lawyers who receive OEO funds from suing any governmental agency. The amendment was defeated, because of contentions that a lawyer is entitled to bring any suit that may be in his client's interest. See H. SIMMONS, *supra* note 106, at 249. See also Sacramento Bee, Jan. 23, 1968, at A23, col. 7.

<sup>147</sup>Rennart, *U.S. Probe Clears Rural Legal Assistance Group*, The Sacramento Bee, June 23, 1968 at A7, col. 1.

engaged in improper administrative practices. Many of the early fair hearing decisions handed down by the State Department of Social Welfare favored the welfare recipient against the Sutter County Welfare Department.<sup>148</sup> Fair hearing procedures,<sup>149</sup> however, only correct individual cases of administrative error; complete compliance with the law was slow to come. In the midst of the controversy, CRLA asked the Department of Health, Education and Welfare<sup>150</sup> to use its powers to force the state to comply with federal statutes by terminating federal financial assistance to the California State Department of Social Welfare.<sup>151</sup> CRLA also asked the California State Department of Social Welfare<sup>152</sup> to use its powers to force local welfare department compliance by either withholding state and federal funds from the local welfare department;<sup>153</sup> or by assuming direct responsibility for the local administration;<sup>154</sup> or by bringing an action in mandamus in court to compel compliance.<sup>155</sup>

Many of the alleged violations committed by the Sutter County Welfare Department were documented in the correspondence between CRLA and the state and federal welfare departments.<sup>156</sup> In essence, the complaints alleged that the local welfare department was

<sup>148</sup>Interview with John Moulds III, Directing Attorney of California Rural Legal Assistance, Marysville, California, December, 1968.

<sup>149</sup>"If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his application for or receipt of aid or services, or if his application is not acted upon with reasonable promptness, or if any person who desires to apply for such aid or services is refused the opportunity to submit a signed application therefor, and is dissatisfied with such refusal, he shall in person or through an authorized representative, . . . upon filing a request with the department, be accorded an opportunity for a fair hearing." CAL. WELF. & INST'NS CODE § 10950 (West 1966). There has been much controversy as to what should be the proper procedure in a fair hearing. For a discussion of the due process elements which should apply to welfare hearings, see Burris & Fessler, *Constitutional Due Process Hearing Requirements in the Administration of Public Assistance: The District of Columbia Experience*, 16 AM. U.L. REV. 199 (1967).

<sup>150</sup>See Letter from Myron Moskowitz and John Moulds III, attorneys for California Rural Legal Assistance, Marysville Office, to John Gardner, Secretary of the United States Department of Health, Education and Welfare, Aug. 3, 1967; Letter from Myron Moskowitz and John Moulds III, to John Gardner, Aug. 24, 1967; Letter from Myron Moskowitz to Joseph Meyers, Deputy Administrator, Social and Rehabilitation Service, United States Department of Health, Education, and Welfare, Feb. 16, 1968. (These letters are on file with the U.C.D. LAW REVIEW).

<sup>151</sup>42 U.S.C. § 604 (1964), *as amended*, (Supp. IV, 1965—1968).

<sup>152</sup>The requests were made in Letter from Myron Moskowitz and John Moulds III, to John Montgomery, Director of the California Department of Social Welfare, July 14, 1967; Letter from Myron Moskowitz to John Montgomery, May 8, 1968. (These letters are on file with the U.C.D. LAW REVIEW).

<sup>153</sup>CAL. WELF. & INST'NS CODE § 10605(a) (West 1966).

<sup>154</sup>CAL. WELF. & INST'NS CODE § 10605(b) (West 1966).

<sup>155</sup>CAL. WELF. & INST'NS CODE § 10605(c) (West 1966).

<sup>156</sup>See Letters, *supra* notes 150, 152.



not endeavoring to secure maximum aid for recipients,<sup>157</sup> that it was not informing the applicants for and recipients of aid of their rights<sup>158</sup> and duties<sup>159</sup> under public assistance programs, and that the work-training programs were being improperly used.<sup>160</sup> The state and federal governments declined to take the drastic measures requested by CRLA, but pressures on state officials to correct the problem have had some effectiveness. Many of the more obvious abuses were stopped, but problems between welfare recipients and the county welfare department still exist.<sup>161</sup>

The difficulty in correcting problems similar to those presented in the Sutter County example is not simply due to local autonomy. A major part of the difficulty is that mechanisms created for forcing compliance with federal statutes and regulations are ineffective. To receive grants from the federal government for categorical aid, each state must adopt a "state plan" which will pass approval by the Department of Health, Education and Welfare (HEW).<sup>162</sup> The plan consists of statutes, regulations, manuals, bulletins and policies adopted by the state and the means of administering the plan on the local and state levels.<sup>163</sup> If the state's plan or its administration is found to be "non-conforming", HEW can stop or decrease payments to the state.<sup>164</sup> Such a method of correcting abuses or forcing compliance with federal law has generally been ineffective because the power is too drastic to be used. Consequently, approval of "state plans" is normally *pro forma*, with little or no decrease or stoppage of funds when practices do not conform by law.<sup>165</sup> Even if the sanction were used, its effectiveness is further diminished by the length of time required to implement it, and by its harsh effects upon innocent welfare recipients once it is implemented. The enforcement technique

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<sup>157</sup>In the Matter of Victor Blank (Calif. Dep't of Soc. Welf., State No. 51—30); In the Matter of Juanita Blank (Calif. Dep't of Soc. Welf., State No. 51—30). Fact situations obtained during Interview with Ralph Abascal, California Rural Legal Assistance, Marysville, California, Feb. 24, 1970.

<sup>158</sup>See *Diaz v. Quitoriano*, 268 A.C.A. 82, 74 Cal. Rptr. 358 (1969).

<sup>159</sup>*People v. Beck*, Civ. No. 265—13 (Sutter Justice Ct., May 1968), noted in 2 C.E.B. LEGAL SERVICES GAZETTE 274 (1968).

<sup>160</sup>H. SIMMONS, *supra* note 106, at 183—85.

<sup>161</sup>Interview with Ralph Abascal, *supra* note 157. For a recent case filed against the Sutter County Welfare Department, see *Vasquez v. Quitoriano* (E.D. Cal., filed June 17, 1969), noted in 3 CLEARINGHOUSE REV. 151 (Oct. 1969). For recent problems with food distribution programs in Sutter County, see Fourkras, *Law Unit Charges Aid Chiefs Deny Needy*, Sacramento Bee, Feb. 6, 1970, at B1, col. 3.

<sup>162</sup>42 U.S.C. § 602(a) (Supp. IV, 1965—1968).

<sup>163</sup>*Murphy & Wexler, Alternatives to King v. Smith in Enforcing State Compliance with the Social Security Act*, 3 CLEARINGHOUSE REV. 61 (July, 1969).

<sup>164</sup>42 U.S.C. § 604 (Supp. IV, 1965—1968).

<sup>165</sup>See *Murphy & Wexler, supra* note 163, at 70.

would only accomplish the same ends sought by the violator: the termination of welfare benefits.

For the rural recipient, as well as other recipients, it is essential that alternatives to the termination of funds be provided which can prevent discretionary abuses by local welfare departments. One such alternative is giving rural recipients political and legal representation in dealings with local welfare departments. Legal assistance for farm laborers and other rural poor has not been available in any appreciable degree outside of California. A successful legal solution to welfare abuses in the rural areas, where such practices are more visible, would have a significant impact in urban areas where discretionary abuses are somewhat less apparent. Such has been the experience of the California Rural Legal Assistance whose successful legal attacks on the welfare system in rural counties have affected welfare administration throughout the state and the country.<sup>166</sup>

Political representation for the recipient as a method of fighting the discretionary aspects of the present system will be much more difficult to obtain because of its relationship with economic power. There are methods, however, to at least dilute some of the power held by those presently in control. The most effective of these would be including the recipients and groups representing them in the decision making process of the local welfare departments.<sup>167</sup> Such involvement can partially be accomplished by adopting a policy which would require employment of recipients in the department to serve as aids to the professional social worker, to help interpret programs to applicants and to help administrators better understand applicants' problems.

Another means of obtaining greater participation by the poor in a local board's decision making process is through the establishment of local review boards.<sup>168</sup> Members of the review board could be

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<sup>166</sup>"The author [Deputy Director, California Department of Social Welfare] is particularly grateful that Legal Services Program has successfully attacked barbaric injustices against poor people involving residence laws, responsible relative laws, man-in-the-house rules, and maximum grants which . . . establishes an equitable amount of need and then pays less than needed. Social workers had been absolutely impotent for decades in respect to achieving reform of the kind that the Legal Services Program is achieving in a few short years. . . . CRLA attacked and destroyed great impediments to justice for the poor in welfare law—a fact the author was incapable of achieving in an unresponsive entanglement of law and regulation strongly supported by the county and state entrenched establishment." H. SIMMONS, *supra* note 106, at 254.

<sup>167</sup>Murphy & Wexler, *supra* note 163, at 70.

<sup>168</sup>This idea originated in a letter from the Project Director of the Technical Assistance Project, to John Gardner, Secretary of the United States Department of Health, Education and Welfare, Sept. 11, 1967. (The letter is on file with the U.C.D. LAW REVIEW).

selected from among local representatives of the welfare department and representatives of groups or organizations concerned with problems of the poor.<sup>169</sup> A majority of the membership should be drawn from welfare recipients and groups organized to represent them. The function of the board would be to approve or to disapprove any action of the local department which would result in denying, terminating, or modifying aid payments when the decision is based on the interpretation of terminology which could lend itself to arbitrariness and misuse. Prime examples of such terminology are words such as "without good cause" and "reasonable." The review board could stop an abuse of discretion before it occurred. The review board process would be an additional and precedent action and not a substitute for the fair hearing process. The hearing process would still offer recourse after an abuse of discretion did occur.

#### IV. THE MIGRANT FARM LABORER: TRANSIENCY AND RESIDENCE REQUIREMENTS

Durational residence requirements originated with the Elizabethan Poor Laws<sup>170</sup> and the early settlement laws.<sup>171</sup> Before an applicant for public assistance could receive aid, he was required to reside in the particular locality for a pre-determined period of time. The Social Security Act, when enacted, permitted states to establish durational residence requirements up to one year.<sup>172</sup> These requirements were frequently attacked by those seeking welfare reform.<sup>173</sup> The primary objection was that the residence requirements were "arbitrarily imposed barriers to meeting human needs,"<sup>174</sup> since they allowed a community to avoid its responsibility for the well-being of an individual regardless of the severity of his need. Durational residence requirements were of a particular burden on migrant

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<sup>169</sup>For an article raising questions as to the effectiveness of poor people on welfare boards and committees, see Donnell & Chilman, *Poor People on Public Welfare Boards and Committees, Participation in Policy-Making?*, 7 WELFARE IN REVIEW 1 (May—June 1969).

<sup>170</sup>47 Eliz. c.2 (1601).

<sup>171</sup>The Settlement Act of 1662, 13 & 14 Car.2, c.12.

<sup>172</sup>49 Stat. 627 (1935), as amended, 42 U.S.C. § 602(b) (1964).

<sup>173</sup>See U.S. SOCIAL SECURITY BOARD, ANNUAL REPORT, 21 (1942); *id.* at 43 (1944); *id.* at 114 (1947); *id.* at 134 (1949). See also, Altmeyer, *People on the Move*, 9 SOCIAL SECURITY BULL. 1 (Jan. 1946).

<sup>174</sup>G. STEINER, SOCIAL INSECURITY: THE POLITICS OF WELFARE, 132 (1966).

farmworkers because of the transient nature of their work. Migrant workers could rarely qualify for public assistance because they usually left the state or county prior to completing the required period of residency, even if they returned to the same communities year after year. In spite of what would seem obvious humanitarian reasons for not having durational residence requirements, such requirements were immune from attack until the late 1960's.<sup>175</sup> Constitutional arguments, coupled with the reality of the mobility of modern society, made attacks on residence requirements more effective.<sup>176</sup> Durational residence requirements of many states were challenged in the courts.<sup>177</sup> The case of *Shapiro v. Thompson*,<sup>178</sup> reached the United States Supreme Court after a federal district court<sup>179</sup> invalidated a durational residence test. One of the main factors working against the abolition of the durational residence requirement was the fear that if the court struck down the requirement for welfare, it might also do the same in other areas of the law, such as voting, engaging in certain occupations, and attending a state-supported university.<sup>180</sup> The Court held, however, that durational residence requirements for welfare payments were unconstitutional because they are a violation of the right to travel<sup>181</sup> and a violation of the right to equal protection of the law.<sup>182</sup> The Court also held that the durational residence requirement enacted by Congress for the District of Columbia, violates the Due Process Clause of the Fifth Amendment to the United States Constitution.<sup>183</sup>

<sup>175</sup>In 1964 forty-six states had some form of durational residence requirement. CHARACTERISTICS, *supra* note 84.

<sup>176</sup>For various arguments against residence requirements see Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 CALIF. L. REV. 567—641 (1966); LoGalto, *Residence Laws—A Step Forward or Backward*, 7 CATHOLIC LAWYER 101 (1961); Note, *Residence Requirement for Public Relief: An Arbitrary Prerequisite*, 2 COLUMBIA J. OF L. & SOCIAL PROB. 133 (1966); Note, *Residence Requirements in State Public Welfare Statute—I*, 51 IOWA L. REV. 1080—95 (1966); Comment, *The Constitutionality of Residence Requirements for State Welfare Recipients*, 63 NW. U.L. REV. 35 (1968).

<sup>177</sup>Cases making this challenge are listed in 1 CCH POV. L. REP. ¶ 1200.22 (1969).

<sup>178</sup>394 U.S. 618 (1969).

<sup>179</sup>*Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967).

<sup>180</sup>The Court avoided the issue by a footnote indicating that they are not ruling on the validity of residence requirements in these other areas. 394 U.S. at 638 n.21. An equally strong argument against the abolition of durational residence requirements was that posed by the states contending that such an abolition would cause an influx of welfare applicants into states paying higher benefits. *Id.* at 629, 633. A recent study indicates that such an “influx” did not occur after the decision in the *Shapiro* case. Chambers, *Residence Requirements for Welfare Benefits: Consequences of Their Unconstitutionality*, 14 SOCIAL WORK 29 (Oct., 1969).

<sup>181</sup>394 U.S. at 638.

<sup>182</sup>*Id.*

<sup>183</sup>*Id.* at 642.

Although durational residence requirements had imposed an extra burden on migrant farmworkers, it is questionable that the abolition of the requirements will significantly benefit migrant farm laborers applying for public assistance. When the Supreme Court declared durational residence requirements unconstitutional, it did not directly address itself to the problems presented by "permanent" residence requirements. The California legislature, contemplating such a limited decision, passed the following statute:

In the event durational residence requirements . . . are held invalid, the [welfare] department shall establish such regulations as are necessary to insure that aid is paid only to those persons who have established a permanent residence in this state.<sup>184</sup>

Acting in accordance with the statute, California welfare administrators assured the public that only actual residents of the state would receive public assistance.<sup>185</sup> All fifty-eight of California's counties were notified that although residency time limits for welfare benefits were invalid, residence is still a requirement and that the key elements in legal residency are physical presence in the state and the intent to remain.<sup>186</sup> The migrant labor force, by definition, is so mobile that a laborer may never intend to become a permanent resident of any state, or if he does declare a state as his home, he is very often away from it.<sup>187</sup> Frequently the migrant's only reason for being in a state is that he has followed the harvest there.

Not all migrants, however, travel between states, many migrate within one state, from county to county.<sup>188</sup> The welfare residency status of the intrastate migrant in California has been settled by a

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<sup>184</sup>CAL. WELF. & INST'NS CODE § 11103 (West Supp. 1970). HEW interim policy, following the *Shapiro* case, allow states to require permanent residence within a state as a basis for welfare eligibility. HEW regulations define a resident of a state as "one who is living in the state voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom. . . . Temporary absences from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, shall not interrupt continuity of residence." 45 C.F.R. § 202.3(b), 34 Fed. Reg. 8715 (June 3, 1969).

<sup>185</sup>Smith, *State Will Restrict Welfare and Payments to Actual Residents*, Sacramento Bee, May 6, 1969, at A1, col. 3.

<sup>186</sup>*Id.* at A 22, col. 6.

<sup>187</sup>Of 9,975 migrants in California O.E.O. Migrant Centers, 399 claimed to have no home base, and 2,000 had homes in Mexico. CAL. OFFICE OF ECONOMIC OPPORTUNITY, SECOND ANNUAL PROGRESS REPORT: CAL. MIGRANT MASTER PLAN 5 (1967).

<sup>188</sup>A study done on California farm earnings in 1965 showed that 19.5 percent of the California farm earnings sampled were a result of working in two or more areas. Over 64 percent of those classified as migrant workers received their earnings in two or more areas. Each county outside of the worker's local area (the county he lived in or could commute to from where he lived) was counted as an additional area. ADVISORY COMM. ON FARM LABOR RESEARCH, CAL. ASSEMBLY COMM.

recently enacted statute which provides that county residence cannot be a qualification for any public assistance program.<sup>189</sup> It is still necessary, however, to determine the county in which the applicant for aid lives<sup>190</sup> since it is that county that has the responsibility for the payment of public assistance.<sup>191</sup> Proper determination of county responsibility can be of great importance to an individual farmworker, as the following excerpt from hearings on farm labor problems indicates:

On residential requirements for hospitalization and welfare, I have come to the conclusion that the interests which are in favor of residential requirements are actually opposed to any hospitalization or welfare at all for the agricultural workers, or for any workers. I, as an agricultural worker, have had that experience, and my family as a whole. I had a boy who got sick who came up north looking for work, he got work, he got sick, his insurance gave out, and he landed in the county hospital up here. I wanted to get him transferred to my county where he was born and raised and graduated from high school and everything like that, and the social workers over there denied it. They called him a homeless man. And I inquired to the supervisors, and they said that there was some question whether he was a citizen of Tulare County or not, as he had been in and out and away a great deal of the time. Incidentally, the boy had been in and out a great deal of the time in Korea. Those are the things that we, as agricultural workers, know and understand.<sup>192</sup>

The California Department of Social Welfare has issued new regulations which attempt to clarify the method of determining the place where an applicant "lives."<sup>193</sup> The county where the applicant is physically present when he makes his application, is normally considered to be the county in which he "lives".<sup>194</sup> If, however, a family remains in an established home in one county while one or more members are in a second county for temporary employment, *such as farm labor*, the entire family is considered to be living in the county

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ON AGRICULTURE, THE CALIFORNIA FARM LABOR FORCE: A PROFILE 15—16, 43 (April, 1969) [hereinafter cited as FARM LABOR FORCE: A PROFILE]. In 1968, of the 29,200 non-local workers classified as temporary domestic farmworkers, 15,900 were estimated as intrastate farm laborers. CAL. DEP'T OF EMPLOYMENT, ANNUAL FARM LABOR REPORT 8 (1968).

<sup>189</sup>CAL. WELF. & INST'NS CODE § 11102 (West Supp. 1970).

<sup>190</sup>CAL. WELF. & INST'NS CODE §§ 11102(a), 11102(b) (West Supp. 1970).

<sup>191</sup>CAL. WELF. & INST'NS CODE § 11102(a) (West Supp. 1970).

<sup>192</sup>*State of California, Governor's Hearing on Farm Labor* 67, (Hearing held in Sacramento, Cal., March 13, 1964).

<sup>193</sup>CALIFORNIA STATE DEPARTMENT OF SOCIAL WELFARE, Manual Letter No. 89 (Dec. 9, 1969).

<sup>194</sup>CAL. PSS MANUAL § 40—125.3 (effective 12-1-69).

where the home is located.<sup>195</sup> Accordingly, the latter county has the responsibility for determining eligibility or ineligibility and for granting or denying aid.<sup>196</sup> Not all migrant workers, however, leave members of their family behind when seeking employment and not all migrants have declared home counties. In these situations the new regulations fix responsibility for aid on one county as follows:

For farm laborers applying for *AFDC* on the basis of part-time employment, if the family has accompanied the employed member to a county, whether or not there is a home base in some other county, the county in which the family is presently located is responsible for accepting the application, determining eligibility, paying aid and providing services until the family returns to their home base, or if they have no home base, until the family remains in one county for a period of at least 60 days. The employed member need not remain with the family, but may go to work in one or more other counties.<sup>197</sup>

The problems arising out of permanent residency of intrastate migrants are much easier to solve because only one state is involved. Problems arising out of residency of migrants traveling interstate become increasingly difficult as more states become involved. For interstate migrant farm laborers, the change from a required period of residence to a requirement of permanent residence is of little benefit, since for these people migration is a way of life. "Home" is often a bus or truck, the back of a stationwagon, a tent, or for the more fortunate, a farm labor camp.<sup>198</sup> Each spring great numbers of these migrants move along established migratory routes.<sup>199</sup> California migrants travel into Oregon and Washington.<sup>200</sup> Workers from Florida travel the East Coast route, working in the Carolinas, Virginia, Maryland, Delaware, and other Atlantic states.<sup>201</sup> By the time migration reaches its peak, many migrants will have worked in 668 counties of 46 states.<sup>202</sup>

<sup>195</sup>CAL. PSS MANUAL § 40—125.31 (effective 12-1-69).

<sup>196</sup>CAL. PSS MANUAL, § 40—125 (effective 12-1-69).

<sup>197</sup>CAL. PSS MANUAL, § 40—125.1 (effective 12-1-69).

<sup>198</sup>See U.S. DEPT OF AGRICULTURE, DOMESTIC MIGRATORY FARMWORKERS, PERSONAL AND ECONOMIC CHARACTERISTICS 8 (Agricultural Economics Rept. No. 121, 1967) [hereinafter cited as Rept. No. 121].

<sup>199</sup>In 1964 migratory workers who crossed state lines to work on farms comprised approximately 36 percent of all migratory workers. *Id.* at 12, 14.

<sup>200</sup>Composed of about 15,000 workers, the Pacific Coast stream originates in California's Imperial Valley near the Mexican border and extends through California, Oregon, and Washington. Interview with William H. Tolbert, Chief of the California Farm Labor Service, Nov. 15, 1968.

<sup>201</sup>See METZLER, MIGRATORY FARMWORKERS IN THE ATLANTIC COAST STREAM 4—5 (U.S. DEPT OF AGRICULTURE, Cir. No. 966, 1955).

<sup>202</sup>S. Rep. No. 1006, 90th Cong., 2d Sess. 1 (1968).

The welfare problems caused by interstate migrants are compounded by the fact that most workers start their migration with only a hope of finding work,<sup>203</sup> thus increasing the likelihood that welfare help will be needed. Of the ones that do have pre-arranged jobs, most have been recruited by a farm labor contractor. Frequently, however, these labor contractors make misleading statements about terms of employment, wages, and fees.<sup>204</sup> It is not uncommon for the migrant to arrive at the place he is supposed to work and find that the contractor has over-recruited or that for some reason he is unable to immediately begin work.

Although the federal government provides some assistance to state and local agencies under Title III-B of the Economic Opportunity Act,<sup>205</sup> for the establishment of migrant centers, the question still remains as to which state can be held responsible for giving public assistance aid to the interstate migrant worker. Most migrants have a winter home to which they return once the agricultural season ends.<sup>206</sup> It is in this state where the migrant probably has his legal residence. In California, for the purposes of welfare, a residence once established continues until a new residence is established in another state.<sup>207</sup> Leaving a state for temporary purposes will not result in a loss of residence.<sup>208</sup> However, the fact that the migrant may have a permanent residence in the state of his home-base and would be entitled to receive aid in that state, is of little value to the laborer who is out of

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<sup>203</sup>"[The] picture that emerges is one of trial and error, of disappointment or rebuke here or there, of a great deal of frantic movement within the season and from one season to the next, most of it based on rumor or on the chance that things will prove to be better somewhere else." V. FULLER, *NO WORK TODAY! THE PLIGHT OF AMERICA'S MIGRANTS*, (Nat'l Council on Agricultural Life and Labor, Public Affairs Pamphlet No. 190).

<sup>204</sup>See Comment, *Migrant Farm Labor in Upstate New York*, 4 COLUMBIA J. OF L. & SOCIAL PROB. 1, 8—9 (1968).

<sup>205</sup>42 U.S.C. §§ 2861—64 (1964), *as amended*, (Supp. IV, 1965—1968). In 1967 approximately 3,000 migrants were turned away from O.E.O. migrant centers and in 1968 approximately 8,000 were turned away. Letter from Douglas Taylor, Consulting Sanitarian, Cal. Dep't of Public Health, Farmworkers Health Service, to the U.C.D. LAW REVIEW, Dec. 24, 1968.

<sup>206</sup>Rept. No. 121, at 15. Migrants travel three major routes. Those traveling the Atlantic Coast States have home-bases in Florida; those traveling the Central and Mountain States have a home base in Texas; and those traveling the Pacific Coast States have a home-base in either Texas or Southern California. *Id.* at 11.

<sup>207</sup>CAL. PSS MANUAL, § 41—203.1 (effective 1-1-70).

<sup>208</sup>CAL. PSS MANUAL, § 41—207.23 (effective 1-1-70). Physical absence from the state indicates a possible change of residence. *Id.* at § 41—207.21. If a recipient is absent from the state for more than one year for good cause, then his statement of intent to retain California residency must be supported by other evidence. *Id.* at § 41—207.22.



the state seeking work and in immediate need of food, lodging and clothing.<sup>209</sup> Many migrants do not even have a home-base.<sup>210</sup>

The *Shapiro* decision does not directly consider the problems discussed above, even though permanent residence requirements also appear to violate equal protection and the right to travel.<sup>211</sup> Although the federal government is probably best equipped to solve welfare residency problems of migrant labor,<sup>212</sup> the states can reduce current inequities by forming reciprocal service agreements to make welfare services available to migrants who continuously travel in a set stream between certain states. Close cooperation would be essential in maintaining eligibility and rendering services. Such agreements could establish a cost-sharing plan and reimbursement system whereby a state that has expended funds would be reimbursed by the participating states. The goal should be to provide the migrant with prompt and adequate public assistance. The burden of any state conflict problems should not fall upon the migrant farm laborer.

## V. FARM LABORERS' EMPLOYMENT SITUATION: LOW INCOME AND SPORADIC EMPLOYMENT

### *A. Lack of Economic Protections and Its Effect on Welfare Services*

In addition to public assistance, there are several other government financed aid programs, such as unemployment insurance, veterans benefits and various business subsidies.<sup>213</sup> Of these programs only public assistance has the social stigma of being a "hand-out."<sup>214</sup> Public assistance is generally viewed as a last means for obtaining economic support, to which the hopeless individual turns when all

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<sup>209</sup>"[It] takes little logic to conclude that the need for food, clothing and lodging has an aspect of immediacy...." *Green v. Dep't of Public Welfare*, 270 F. Supp. 173, 178 (D. Del. 1967).

<sup>210</sup>*See, supra* note 187.

<sup>211</sup>The questions are not limited to the migrant laborer. There are other situations where individuals are in a state for a temporary purpose and find themselves in need of public assistance.

<sup>212</sup>If the welfare programs were administered entirely by the federal government, there would be no justification for any state residence requirement.

<sup>213</sup>C. GREEN, *supra* note 76, at 6-7.

<sup>214</sup>Unemployment insurance is thought of as giving aid to individuals who have worked and are in need only because of employment circumstances beyond their control. Veterans benefits and special subsidies are looked upon as legitimate aid to individuals who are engaged in activities considered essential to society.

other subsistence has failed. For many groups, including the farmworker, there is no alternative.

The farmworker must rely on public assistance because he does not have the traditional “pre-public assistance” protections against the hardships of low wages and temporary unemployment. He is not covered under unemployment insurance programs which could help sustain him during periods of temporary loss of employment. Because he is not given strong minimum wage protections<sup>215</sup> and unionization sanctions<sup>216</sup> as a means of preventing low wages, he is unable to accumulate savings to sustain himself during periods of seasonal unemployment. Accordingly, a high percentage of his poverty problems, aside from his lack of education,<sup>217</sup> stem from his particular employment situation.

### *1. Farm Labor Welfare Problems Due to Low Wages*

Implicit in present welfare programs is the assumption that there can be no “deprivation” in a family where a parent is fully employed, even if the amount of income is less than welfare payments.<sup>218</sup> A person who works, it is assumed, can take care of himself. Such an assumption, however, is not true of the farm laborer because his wages are too low and there are few income protections.

A 1965 study made for the California State Social Welfare Board<sup>219</sup> revealed that 35 percent of the families on aid due to an unemployed parent received more on aid than they could have received doing farm work. This was true even when more than one member of the family worked. The report also noted that 98 percent of the skilled blue-collar employees, 100 percent of the semiskilled operatives, 60 percent of the service workers, and 90 percent of the unskilled non-farm laborers whose families were on aid due to the unemployment of a parent received less in aid than they could have received in earnings from their usual occupation. It is clear that many farmworkers are better off economically in receiving public assistance aid than they would be by working.

<sup>215</sup>29 U.S.C. §§ 203(e), 206(5) (Supp. IV, 1965—1968).

<sup>216</sup>N.L.R.A. § 2(3), 29 U.S.C. § 152(3) (1964).

<sup>217</sup>Farmworkers also experience unemployment due to lack of education because they are unable to qualify for off-season employment. SUPPLEMENTAL WAGE, *supra* note 97, at 13.

<sup>218</sup>*Cf.* CAL. PSS MANUAL § 42—340. (effective 7-1-69).

<sup>219</sup>REPORT OF THE CAL. SENATE COMM. ON LABOR AND WELFARE, CALIFORNIA’S PUBLIC ASSISTANCE PROGRAMS 27—28 (1965) [hereinafter cited as REPORT ON PUBLIC ASSISTANCE].

At present there is no provision for supplementing the income of persons whose employment is "full-time".<sup>220</sup> To qualify for supplementation, the recipient can only perform work which is considered "part-time." "Part-time" work in agriculture would mean working monthly hours equaling less than the generally available short-term employment.<sup>221</sup> When the farm laborer works full-time, therefore, even though it is short-term, he receives no benefits, despite the fact that his income may be below the amount he would receive if he were on welfare.<sup>222</sup>

The peculiar situation of the farm laborer has been documented by Harold Simmons, Deputy Director of the California Department of Social Welfare:

The C family received Aid to Families with Dependent Children on the basis of the unemployment of the father for several months prior to February 1965 when Mr. C found full-time employment. The family contended that Mr. C, the father, did not earn enough to support the family, as they were about \$100 short of what they received on AFDC. The maximum participating base for six children with two parents is \$337. Mr. C and Mrs. C... are the parents of six children ranging from 2 to 9 years old. Mr. C has supported his family from farm work, and

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<sup>220</sup>A few states supplement the wages of full-time employees through their general assistance program. C. GREEN, *supra* note 76, at 38. In the California County of Sacramento, the Board of Supervisors did supplement the income of a fully employed individual. The recipient was a middle aged unskilled laborer with eleven children who was formerly a recipient of \$418 a month under the unemployed parent program (AFDC-UP). During the year he obtained employment which paid him \$360 per month and thus was ineligible for welfare aid. The Board authorized payment of \$48 a month to supplement his income up to the prior \$418 per month he received while on welfare. 1 C.E.B. LEGAL SERVICES GAZETTE 134 (1967).

<sup>221</sup>Deprivation due to unemployment exists when either parent is not working or is working less than 152 hours per month in an industry where full-time work is 173 or more hours per month; or if full-time work is under 173 hours, is working less than seven-eighths of the number of hours established as full-time. CAL. PSS MANUAL § 42—340.1 (effective 7-1-69).

<sup>222</sup>The farmworker does not receive welfare benefits if he works 35 hours a week even though earnings would be less than the amount he would have received on welfare. Telephone Interview with Mrs. Jones, Yolo County Welfare Department, Feb. 20, 1970. Aid is discontinued effective at the end of the month in which the parent has received pay for 35 hours of work if the type of employment is expected to provide 152 hours or more of work the following month. CAL. PSS MANUAL § 42—340.62 (effective 7-14-69). Determining the availability of future employment in agriculture is not always an easy matter. *Cf.* In the Matter of H (Cal. Dep't Soc. Welf. State No. 35—30), II C.E.B. LEGAL SERVICES GAZETTE 275 (1968). If, however, the determination is incorrect and the recipient notifies the welfare department that less than 152 hours were actually worked and that there was no refusal of employment without good cause, any loss in welfare benefits will be adjusted. CAL. PSS MANUAL § 42—340.621(b) (effective 7-14-69), 44—331.123 (effective 7-1-67).

other seasonal work, . . . General Relief and later AFDC have been sources of support for the family during periods of unemployment. After AFDC was discontinued in February 1965, an appeal was initiated. The appeal hearing disclosed that in April 1965, Mr. C continued to work on a mushroom farm at an hourly wage of \$1.35. During some weeks he worked 10 hours a day, with take-home pay of \$67. Based on four and one-third weeks in a month, his earnings would have been \$290.34. However, there were other weeks when he lost a day or two because of rain, in which case his take-home pay averaged \$40 to \$50 per week. The family paid \$85 rent. They said that after they paid their rent they did not have enough money left to buy food for the family of eight. In the appeal decision, the hearing officer stated that it is obvious that this family is obliged to subsist at a poverty level even though the bread winner is fully employed. However, there is no remedy to this problem within the framework of the AFDC-U program as presently constituted.<sup>223</sup>

Aside from the problem of low wages,<sup>224</sup> considerable income is lost through poor accounting procedures and improper deductions.<sup>225</sup> The constantly changing work relationships between farmworkers and employers make accurate record keeping difficult. Even where the farmer is not at fault, camp operators and contractors sometimes improperly keep part of the farm laborers earnings.<sup>226</sup> Workers who object to any of these procedures are usually summarily dismissed.

## 2. Farm Labor Welfare Problems Due to Sporadic Employment

The problem of sporadic farm employment is directly related to seasonal crop production. Even during the peak periods of farm employment, work is performed on a day to day basis. According to a report by the California Senate Committee on Labor and Welfare, the yearly work cycle of many farm laborers is comprised of "two or three months of unrelenting work opportunity, six months of under-employment and three to four months of unemployment."<sup>227</sup> The problem of sporadic employment is not going to diminish, since with the increase in farm mechanization, the need for year-round farm labor is decreasing and the need for temporary or seasonal workers is

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<sup>223</sup>H. SIMMONS, *supra* note 106, at 293—94.

<sup>224</sup>In 1965 the California farmworker averaged \$1.36 per hour. REPORT ON PUBLIC ASSISTANCE 26.

<sup>225</sup>Lecture by John Moulds III on "Technology, Poverty and the Law." University of California, Davis (April 1969). Cf. PROCEEDINGS ON LAW AND POVERTY, *supra* note 17, at 112—13.

<sup>226</sup>See, Comment, *supra* note 204.

<sup>227</sup>REPORT ON PUBLIC ASSISTANCE 26.

increasing.<sup>228</sup> Such underemployment means that many workers will continue to receive inadequate income and must be supported, in part, by collateral sources. Under these circumstances, if the farmworker can receive welfare he will, not because he wants to, but because he is forced by the economics of his situation.

Short-term employment frequently hinders the ability of the farmworker to obtain welfare assistance. The welfare department's plan of service is continuously being interrupted, whether it is medical, food, or cash aid. Assistance is discontinued effective at the end of any month in which the farm laborer receives pay for 35 hours of work or more, and it can be expected that he will work 152 hours or more the following month.<sup>229</sup> Once off of public assistance because of short-term employment, he is ineligible for further assistance until he has been unemployed for at least 30 consecutive days.<sup>230</sup> He also must re-apply for aid, even though there may have only been a short period that has elapsed since he last applied for and received aid. The application procedure is tedious and difficult, particularly if the worker is only able to speak Spanish. Consequently, there is often a delay in restoring aid to the recipient even when an emergency occurs or he is without work.

The farmworker's temporary and short-term employment situation is also psychologically demoralizing. He sees no security in his earnings or future earnings because his work is sporadic. Nor can he totally rely on the welfare department because his constantly interrupted plan of service precludes any continuous commitment by the welfare department to help him.

### *B. Bulletin No. 644: Administrative Attempts to Correct Farmworkers' Welfare Problems*

In May of 1965, because of the farm labor shortage, the State Department of Social Welfare issued Bulletin No. 644.<sup>231</sup> The bulletin attempted to provide farm income when the income of the recipient fell below AFDC standards. It provided for the continuation of aid for seasonal farmworkers by redefining part-time employment as it applied to farm labor. The new definition provided that irregular, temporary, or intermittent work at farm labor which provided no

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<sup>228</sup>SUPPLEMENTAL WAGE, *supra* note 97, at 14—15.

<sup>229</sup>CAL. PSS MANUAL § 42—340.62 (effective 7-14-69).

<sup>230</sup>CAL. PSS MANUAL § 42—340.33 (effective 7-14-69).

<sup>231</sup>Cal. Dep't of Social Welfare, Department Bulletin No. 644 (AFDC), dated May 24, 1965, *modified* Oct. 1, 1965. For a comprehensive history of Bulletin No. 644, see H. SIMMONS, *supra* note 106, at 285—358.

assurance of a dependable amount of income should be presumed as part-time labor. The presumption was overcome when the farmworker had worked in farm labor a minimum of 173 hours per month for three consecutive months and there was an expectation that work would continue indefinitely beyond the next month.<sup>232</sup> The Bulletin also provided that recipients were to be instructed that they were to work as many hours as were available. Supplementation payments would be made to a family to meet the difference between the family income and family need, as computed according to AFDC standards. To facilitate the continuation of services, the Bulletin significantly reduced the reapplication process for reinstating aid during periods of slack employment or for a family emergency. Furthermore, if the family income equaled or surpassed total established need, the family was kept on a "zero grant." The family would remain on the welfare roll and be eligible for full medical care and services of the welfare department, but would not receive any money. The Bulletin also required that those in farm labor be informed of its new benefits and procedures.

The adoption of Bulletin No. 644, seemed to indicate that public assistance programs were ready to consider and answer some of the special problems of the farm laborer. On January 1, 1969, the Director of the California Department of Social Welfare rescinded Bulletin No. 644. The termination of the Bulletin was not surprising. Interest groups representing farmers and rural tax payers opposed the measure from the beginning.<sup>233</sup> A year after the issuance of the Bulletin it became increasingly clear that it was not being fully implemented by the county welfare departments.<sup>234</sup> The pressures to rescind Bulletin No. 644 were so great that public hearings were held to consider whether to affirm, modify, or rescind it.<sup>235</sup> The main arguments against the retention of the Bulletin came from the County Supervisors Association of California and the County Welfare Directors Association of California.<sup>236</sup> Critics argued that the Bulletin had not increased the farm labor pool, that the Bulletin encouraged recipients to remain on welfare instead of motivating them to aggressively seek farm labor, and, finally, that it was discriminatory since it subsidized only the farmworker.

Persons who favored the issuance of Bulletin 664 argued that the farm labor pool had not increased because the Bulletin had not been

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<sup>232</sup>*Id.* at 287.

<sup>233</sup>*Id.* at 290—91.

<sup>234</sup>*Id.* at 307.

<sup>235</sup>Cal. Dep't of Social Welfare, Public Hearing, Bakersfield, Calif. (Nov. 3, 1967).

<sup>236</sup>H. SIMMONS, *supra* note 106, at 309—13, 315—24.

fully implemented; that very few welfare recipients would choose to be on welfare if they could work; and that if the Bulletin was discriminatory it should be extended to other workers.<sup>237</sup> Because of strong recommendations from his staff not to rescind the Bulletin, the Director of the Department of Social Welfare initially decided only to modify its terms.<sup>238</sup> The changes preserved the continuity of service aspect of the Bulletin, but weakened the definition of "part-time" employment. The modified version of Bulletin No. 644 required that if at the end of three months on aid the welfare department determined that full-employment was expected to continue for two additional months the family would be discontinued from public assistance. In the original version of the Bulletin, aid would not be discontinued until the employment was expected to continue indefinitely. The second major change was the addition of a provision which would discontinue a family from aid if the parent failed to work the number of hours considered to be currently available farm labor, as determined by the Department of Employment (in practice the Farm Labor Office).

On May 15, 1968, at the initiative of the State Senator from Tulare County, the California State Senate passed a resolution which recommended that the State Social Welfare Director entirely rescind Bulletin No. 644.<sup>239</sup> The Director called a new hearing to discuss the

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<sup>237</sup>Cal. Dep't of Social Welfare, Public Hearing, Bakersfield Calif., submitted testimony of Carol Ruth Silver for California Rural Legal Assistance (Nov. 3, 1967).

<sup>238</sup>H. SIMMONS, *supra* note 106, at 352.

<sup>239</sup>CAL. SEN. RES. NO. 179, Reg. Sess., First Extra Sess., 2 J. of the Senate 1912 (1968), set forth in full as follows:

"Relative to welfare for farm laborers

"WHEREAS, The State Department of Social Welfare has by administrative policy, under Department Bulletin 644, classified full-time seasonal farm labor as part-time employment for welfare supplementation purposes; and

"WHEREAS, By no stretch of the imagination is full-time employment part-time, even though seasonal; and

"WHEREAS, Full-time wage earners in other fields cannot receive welfare supplementation or full Medi-Cal coverage; and

"WHEREAS, Department Bulletin 644 was initially adopted in 1965, the year that the Legislature specifically refused to enact a bill embodying the concept of welfare supplementation of full-time earnings; and

"WHEREAS, A basic welfare policy affecting eligibility, benefits, and total costs to this extent should be the subject of legislative determination rather than unilateral administrative action; and

"WHEREAS, One of the stated purposes at the time of the adoption of Department Bulletin 644 was to provide an incentive to able-bodied men to undertake farm labor employment without disqualifying their families from public assistance; and

"WHEREAS, Little or no evidence has been presented which demonstrates an increase in farm labor employment or supply as the result of the adoption of this policy; and

Bulletin.<sup>240</sup> Few of those opposing the Bulletin came to the meeting and those that were present said little.<sup>241</sup> The Director, however, rescinded Bulletin No. 644, effective January 1, 1969. The stated reason for the decision was the adoption of exemption rules which provided for limited earned income exemptions in computing public assistance grants.<sup>242</sup> The Director stated that he received complaints of high grants as a result of these exemptions. Members of his staff, however, argued that so few of such grants existed that they should not jeopardize benefits to the majority of rural recipients. Furthermore, the problems of high grants could be corrected administratively without rescinding Bulletin No. 644.<sup>243</sup> The Director did not reconsider his decision, and “[a]lthough unstated, it was apparent that once more the power wielded by the Establishment overwhelmed the [special needs of] the impotent poor.”<sup>244</sup>

### *C. Legislative Attempts to Correct Welfare Problems Caused by Low Income*

On April 2, 1968, California Assemblyman Eugene Chappie

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“WHEREAS, This policy has made the full employment of welfare recipients in farm labor difficult if not impossible, has been a disincentive to such persons to become as self-sufficient as possible, and perpetuates the evils of continuous reliance on welfare for many of our citizens; and “WHEREAS, As a result of this policy, the costs of assistance have gone up, and counties must maintain administrative staff throughout the summer months who would otherwise be required only in the remaining seasons of the year; and

“WHEREAS, The 1967 Amendments to the Federal Social Security Act require that, as an incentive to becoming employed, the first \$30 of earned income and 1/3 of any additional earned income of AFDC recipients who have been in the program for four months will be exempt from consideration in calculating welfare grants; and

“WHEREAS, This policy, when coupled with Department Bulletin 644, multiplies the cost impact in counties with farm labor populations and compounds their supplementation requirements; now, therefore, be it “*Resolved by the Senate of the State of California*, That the Members hereby request the State Department of Social Welfare, and the Director thereof, to rescind Department Bulletin 644 or any departmental regulation promulgated as a modification thereof or in substitution therefore . . . .” *Id.* at 1 J. of the Senate 1682 (1968).

<sup>240</sup>Cal. Dep’t of Social Welfare, Public Hearing, Carmel, Calif. (Nov. 8, 1968).

<sup>241</sup>Presentations were made by the County Supervisors Association, the County Welfare Directors Association, and the Kern County Property Owners Association. Those present in favor of Bulletin No. 644 included members of the CRLA legal staff; attorneys from Neighborhood Legal Services offices in San Francisco, Los Angeles and Berkeley; a few other proponents were members from the Social Workers Union and the Welfare Rights Organization.

<sup>242</sup>Interview with Simmons, *supra* note 91. For the income exemptions see 45 C.F.R. § 233.20, 34 Fed. Reg. 1394 (Jan. 29, 1969).

<sup>243</sup>Interview with Simmons, *supra* note 91.

<sup>244</sup>H. SIMMONS, *supra* note 106, at 355.



introduced California Assembly Bill No. 1344, similar in purpose to that of Bulletin No. 644. The bill extended public assistance under the federal unemployed parent provisions to include parents whose income was less than they could receive on welfare. The scope of A. B. 1344, broader than that of Bulletin 644, included all the poor, farmworker and non-farmworker alike. The legislation was intended to encourage parents to stay employed by providing aid to families with dependent children whose parents have "inadequate earnings." "Inadequate earnings" were defined as earnings from full-time or part-time employment which were less than the amount established by the welfare department as the minimum basic standard of adequate care for the family. Parents who had "inadequate earnings" could receive supplementation of their earnings up to the maximum they could have received on welfare. The bill was passed by both houses of the Legislature on August 7, 1968, after it was limited to an experimental pilot project and modified to require county contribution to the new program. On August 24, 1968, however, the Governor of California vetoed the Bill.

*D. Judicial Attempts to Correct Welfare Problems  
Caused by Low Income*

With the failure of administrative and legislative attempts to supplement income of those who were working full-time but making less than they would have received on welfare, recipients turned to the courts for assistance. Welfare recipients argued that the distinction between equally needy classes of children, solely on the basis that in one class the parents were employed "full-time" instead of "part-time", was a denial of equal protection of the law. The argument was successfully applied to a Georgia statute in the case of *Anderson v. Schaefer*.<sup>245</sup> In that case a three-judge United States District Court held that the distinction between "part-time" and "full-time" employment as a basis for receiving supplemental welfare aid was unconstitutional. The Court said:

That portion of the employable mother regulation which prohibits the supplementation of wages derived from full-time employment violates plaintiffs' constitutional rights established by the equal protection clause of the Fourteenth Amendment to the Constitution in that, although plaintiffs are as needy as other recipients of assistance who also have income, the regulation operates to the financial disadvantage

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<sup>245</sup>Civil Action No. 10443 (N.D., GA., opinion entered April 5, 1968). See 1 CCH POV. L. REP. ¶ 1420.051.

of plaintiffs on the basis of the source of their income and the character of their employment; namely, earned income derived from full-time employment, a basis which bears no reasonable relationship to plaintiffs' financial needs and therefore to the purposes of the Social Security Act.<sup>246</sup>

Relying on the *Anderson* case and on favorable decisions in cases declaring single family maximum grant limitations unconstitutional,<sup>247</sup> California recipients filed the case of *Macias v. Finch*.<sup>248</sup> The maximum grant cases hold that placing a limit on what a family could receive is a violation of equal protection since children in large families receive less aid than children in small families, even though individual need is the same. As in *Anderson*, the plaintiffs in *Macias* are contending that it is a violation of equal protection to distinguish between children whose parents are working "full-time" and those working "part-time" when the needs of each group of children are equal. They also contend that the non-supplementation of "full-time" income which is less than potential welfare benefits encourages recipients not to work, contrary to federal policy which is to encourage poor people to seek employment.<sup>249</sup>

## VI. CONCLUSION

There is a growing awareness within this country that public assistance programs are ineffective because they neither reach the majority of those in need nor provide an adequate level of subsistence. Any change contemplated in the present welfare system, however, must deal with the special needs of the rural poor. The rural poor comprise too great a percentage of the welfare rolls to be ignored. But welfare reform alone cannot provide any meaningful long-term bene-

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<sup>246</sup>Plaintiff's Supplemental Points And Authorities In Support Of Temporary Restraining Order at 1—2, *Macias v. Finch*. Civil No. 50956 (N.D., Cal. March 18, 1969).

<sup>247</sup>See *Williams v. Dandridge*, 297 F. Supp. 450 (D. Md., 1968); *Dews v. Henry*, 297 F. Supp. 587 (D. Ariz., 1969).

<sup>248</sup>Civil No. 50956 (N.D., Cal. March 18, 1969). See 2 CCH POV. L. REP. ¶ 9568.

<sup>249</sup>The *Macias* case was dismissed without leave to amend on February 12, 1970. Arguments similar to the *Macias* case, however, are being made in *Hastings v. Shea*, Civ. No. C—1768 (D.C. Colorado, Sept. 26, 1969), 2 CCH POV. L. REP. ¶ 10,418 and 3 CLEARINGHOUSE REV. 245 (Jan. 1970).

fits to the farm laborer. Welfare must become the same "last resort" for economic assistance for farmworkers as it is for other working classes. Since under-employment and low wages are the key elements in rural poverty, any successful solution must come with the traditional weapons for fighting poor employment conditions, such as unionization, strong minimum wage laws and unemployment insurance. Farm laborers should not be forced to rely on welfare. They are a working class and should be given the ability to solve their particular employment problems through the same devices used by other working classes.

*Arthur Chinski*

