

August 2015

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Recommended Citation

Hensal, C. David (1970) "Legal Problems Involved in the Administration of the A.D.C. Program in Ohio," *Akron Law Review*: Vol. 3 : Iss. 1 , Article 2.

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STUDENT COMMENTS

LEGAL PROBLEMS INVOLVED IN THE ADMINISTRATION OF THE A.D.C. PROGRAM IN OHIO

I. Introduction

THE TERM "welfare rights" has no one precise meaning. The concept embraces political, legal, moral, ethical, social, and economic issues. The way one defines the term depends on who one is and from what perspective one regards the issues raised. It is a matter of identity, outlook, and point of view.

To the substantial middle class, with its traditional hierarchy of values and standard of ethics, the notion that one has a "right" to welfare benefits may appear unfathomable, a contradiction in terms. To the person raised largely by the tenets of the Puritan Ethic, the idea of anyone *demanding* welfare seems incredible.

To the welfare recipient or his organized spokesman, "welfare rights" may even include the idea that one is entitled to demand a certain minimum standard of living. That is, not only has one a right to welfare benefits, but also to that standard of living to which he and his peers consider themselves entitled.

The destitute want to share more fully in the affluence of our society, while the wealthy and middle classes, not surprisingly, want to retain as much as possible of their present opulence. The pie is only so big; hence to give to one group is to take away from another. Much verbal ammunition has been expended in a war of words over who is justly entitled to what. Predictably, the "haves" and the "have-nots" each continue to pursue their own interests at the expense of the other and to the general detriment of our somewhat schizophrenic society.¹

The "haves" typically view the "have-nots" as an unruly, shiftless, urban mass who seem bent on destroying many of our existing institutions. The "have-nots" commonly see the "haves" as a selfish, unfeeling, social Darwinistic class of people who are unaware of and unsympathetic to the present trends and needs of our society.

It is the task of the legislature, the appropriate administrative agencies, and the bench and bar to rise above this narrow,

¹ See L. Diamond, *The Law of the Poor* 33 (1966). "We speak glibly of 'sick' and of 'healthy' economies; because schizophrenia is a disease of the mind characterized by fragmentation and internal division of the ego, so a nation divided against itself is schizophrenic."

stereotyped kind of thinking and to provide workable solutions to the problems confronting, and created by, our urban poor. Much new law has been enacted for the purpose of creating and administering welfare programs.² But the whole (combined) welfare program is itself plagued with internal problems and disputes over goals.

The code provisions and their supplemental rules and regulations do not answer the question of whether an individual has a "right" to welfare benefits. There has been little litigation over the point; consequently, there has been little judicial analysis of the relative rights and duties of the parties involved.³ Too much is left to the inexperienced good intentions of the agency administrator.⁴ However, some reasonably well-defined problems have begun to emerge. Certain justiciable issues are being delineated with more and more clarity. The purpose of this Comment is to examine some of these problem areas and to offer some analysis concerning them. As the title suggests, the discussion will be limited primarily to Ohio's administration of the Aid to Dependent Children (ADC) provisions of the Ohio Revised Code.⁵

II. Sources of the Applicable Law

There are two main sources of welfare law in Ohio: the Ohio Revised Code and the Public Assistance Manual. Title 51 of the Code creates and defines the functions of the various welfare departments. The Ohio Public Assistance Manual (PAM) is a collection of orders, rules, and regulations promulgated by the executive head of the Department of Public Welfare and having the effect of law. Title 3 of the Ohio Revised Code provides for

² Most authorities regard the Social Security Act of 1935 as the beginning of welfare law as we know it today. State Codes were then enacted to take advantage of the Federally assisted categorical programs: Old Age Assistance (OAA), Aid to the Disabled (AD), Aid to the Blind (AB), Aid to Families with Dependent Children (AFDC or ADC), etc. See also, Ohio Revised Code: § 5105, Division of Aid for the Aged; § 5107, Aid to Dependent Children; § 5151, Aid for the Needy Blind.

³ D. Mandelker, *Family Responsibility Under the American Poor Laws*, 54 Mich. L. Rev. 607, 631 (1956). "Even on those issues which have been dealt with at the judicial level there is no unanimity of opinion—perhaps because of the lack of any accepted postulates to guide the decisions of the judges (and administrative officials) in this area."

⁴ Comment, *Eligibility Determination in Public Assistance*, 115 U. Pa. L. Rev. 1307 (1967). "While some of these failings are due to insufficient legislative attention, defects in welfare administration are retarding realization of the potential presently provided for by statute."

⁵ Principally, Ohio Rev. Code § 5107.01 to § 5107.16 (1965).

the county administration of those welfare functions enumerated in Title 51.

It appears clear from the Code that it is the duty of the director of public welfare to provide rules and regulations for the county welfare directors to follow when administering the ADC program for the county pursuant to §§ 5107.01 to 5107.16, inclusive. Put another way, it is the duty of the county welfare director, under the control and direction of the board of county commissioners, to administer the ADC program for the county pursuant to the Code and administrative rules and regulations prescribed by the director of public welfare.⁶

As mentioned earlier, those rules and regulations are found in the Ohio Public Assistance Manual. Section 330 thereof spells out generally the eligibility requirements for the receipt of Aid to Families with Dependent Children benefits.⁷ Section 331 restates certain parts of § 5107.03 (A).⁸ Section 331.2 defines "continued absence of a parent from the home" pursuant to § 5107.03 (E).⁹ Section 331.2 has been so recently revised that a thorough discussion of both the old and new sections is in order. The

⁶ Section 5101.02 (1968 Supp.) of Ohio Rev. Code, provides in part:

"The director of public welfare is the executive head of the department of public welfare. All duties conferred on the various divisions and institutions of the department by law or by order of the director shall be performed under such rules and regulations as he prescribes, and shall be under his control."

Section 329.02 (1968 Supp.) provides in part:

"Under the control and direction of the board of county commissioners, the county director of welfare shall have full charge of the county department of welfare."

Section 329.04 (1968 Supp.) provides in part:

"The county department of welfare shall have, exercise, and perform, under the control and direction of the board of county commissioners, the following powers and duties:

(A) To be the "county administration" for all the purposes of sections 5107.01 to 5107.16, inclusive, of the Revised Code; . . ."

⁷ § 330, PAM: "*Aid to Dependent Children*. . . . A 'dependent child' is a needy child under 21 years of age who has been deprived of parental support or care by reason of any of the following: death, continued absence of the parent from the home, the unemployment of an employable parent, or physical or mental incapacity of a parent."

⁸ § 331, PAM: "*Deprivation of Parental Support or Care*. "A child may be deprived of the support or care of either parent by reason of the death or incapacity of the parent, the unemployment of an employable parent, or by reason of the parent's continued absence from the home. . . ."

⁹ § 331.2, PAM (Effective July 1, 1963; Superseded August 1, 1969): "*Continued absence from the home*. "Continued absence means that one of the parents is out of the home for a continuing period of time, and, as a result the physical care, maintenance, and guidance of the child has been interrupted or terminated. . . ."

August 1, 1969 revision will be considered later, but it is appropriate at this point to undertake a sentence-by-sentence analysis of the pre-1969 section.

III. Analysis of the Pre-1969 Law

Continued absence of a parent from the home under § 5107.03 (A) (E), was defined in § 331.2 of the PAM as a situation in which one of the parents is out of the home for a significant continuing period of time. Section 331.2 stated further (and still states) that continued absence means an absence for a continuing period of time with the result that *the physical care, maintenance, and guidance of the children has been interrupted or terminated*. This is wholly consistent with the "needy child" intendment of the Code. No problems of construction or application appear thus far. What followed, however, was the source of some contention.

Section 331.2 continued: "The following situations provide a basis for determining if continued absence from the home exists." Five situations were then enumerated.¹⁰ The Manual indicated that the five enumerated situations were merely *a basis for determining* whether the requisite absence existed. A reasonable interpretation, therefore, would be that they were simply situations which, if found to exist, would provide at least *prima facie* evidence of continued absence, thereby making further formal proof thereof unnecessary. In the actual administration of the program however, those enumerated situations were apparently accorded the weight of conclusive presumptions. That is, if a mother as sole caretaker of her needy children were to show the existence of any of the five, she would be granted ADC assistance. However, the converse was also true. If none of the

¹⁰ § 331.2, PAM (Effective July 1, 1963; superseded August 1, 1969):

. . . The following situations provide a basis for determining if continued absence from the home exists.

- (1) The parents are divorced or legally separated, or have begun action in a court to secure a divorce or legal separation, and are not living together.
- (2) The parent is in a prison, jail, or workhouse and has been sentenced to a term of at least six months.
- (3) The mother of a child has never been married to the father of the child and is not living with him.
- (4) An actual separation of the parents has existed for six months or longer and there is no plan for them to be reunited.
- (5) The parent has been absent from the home for three months or longer, and non-support or abandonment charges have been filed against the absent parent in a court of record.

five situations could be shown, then there was a conclusive presumption that no continued absence existed. There being no continued absence, there could be no eligibility. By the use of this logic, the welfare department changed a seemingly ordinary enumeration of examples into a list of absolute and exhaustive conditions precedent to eligibility without regard to the actual absence of a parent or the genuine need of the children.

The futility of attempting to determine the intended meaning of the Manual language is obvious. It is the *policy* of the welfare department which affects the public assistance group, not the actual meaning of the Manual language. The true meaning is unimportant except to show that the actions of the welfare department may be inconsistent therewith. Whether such inconsistency is the result of a deliberate discrimination against the public assistance group or merely the result of a simple misconstruction of the Manual phraseology cannot be here determined. In any event, it is not the purpose of this Comment to examine the motives of the welfare department. The purpose is merely to consider the consequences which follow from such a restrictive, if not emasculatory, interpretation of Manual (or Code) language.

For purposes of analysis, assume the existence of a family of nine—a mother, father, and seven minor children. Assume further that the father one day leaves the home for parts unknown, voicing his intention to absent himself from the state and never to return. He takes with him the bank account, if any, and the family's earning power. The wife, who is unskilled and undereducated, is further confined to the home by seven dependent children.

The abandoned mother, before the passage of six months time (and before the 1969 revision of § 331.2 of the PAM) petitions the county welfare department for Aid to Families with Dependent Children. There she is told that she must:

1. begin immediately an action for divorce or legal separation;
2. wait three months and file abandonment or non-support charges;
3. or otherwise wait six months and then reapply.

Assume now that this woman goes to an attorney's office and asks him to get her a divorce in order that she might qualify for ADC Assistance; or, in the alternative, that he challenge what

appears to her to be an arbitrarily oppressive regulation. The lawyer will probably begin by considering the appropriateness of a divorce or other legal remedy and the availability of an administrative appeal. Further examination of these remedies, however, may lead him to conclude that they are of dubious efficacy in the case at hand.

(a) *The availability of an administrative appeal:* A check of the appropriate Code and Manual sections will reveal that an administrative appeal is provided, apparently as a matter of right, to those aggrieved by the decision of the county administrator.¹¹ This means, of course, that the county administrator's decision is not a final order appealable directly to the Court of Common Pleas unless the appeal is on such grounds as would obviate the exhaustion-of-administrative-remedies requirement.¹²

The administrative hearing, while available, is unfortunately less than adequate. The hearing examiner normally confines his inquiry to questions relating only to whether or not the county administrator has properly followed the Manual, in this case

¹¹ Section 5107.02, RC, provides, in part:

"The department of public welfare shall administer sections 5107.01 to 5107.16 inclusive, of the Revised Code. The department may:

...

(F) Afford a fair hearing to any individual entitled thereto under section 5107.05 of the Revised Code, in which case the finding and order of the department shall be final:"

...

Section 5107.05 provides, in part:

"An applicant or recipient aggrieved because of a county administration's decision . . . may appeal to the department in the manner prescribed by the department. . . ."

Chapter 120 of the Ohio Public Assistance Manual provides:

"Fair hearing procedures are designed to assure an applicant or recipient of public assistance under any categorical program (AFA, AB, ADC, AFD) the right to request and to have a fair hearing before a delegated representative of the Director of the Ohio Department of Public Welfare. . . ."

"An applicant for or recipient of public assistance on any categorical program (AFA, AB, ADC, AFD) has the right to request a fair hearing if he is not satisfied by an action of the County Welfare Department. . . ."

¹² Section 2506.01, RC, provides in part:

"Every final order, . . . of any officer, . . . department or other division of any political subdivision of the state may be reviewed by the Common Pleas Court of the county in which the principal office of the political subdivision is located, . . ."

...

A 'final order, adjudication, or decision' *does not include* any order from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority and a right to a hearing on such appeal is provided; . . . (Emphasis added)"

§ 331.2 regarding ADC eligibility. As before mentioned, having decided that the five enumerated situations¹³ are absolute conditions precedent to eligibility,¹⁴ the examiner will affirm the county's position as consistent therewith. Since the county administrator's decision will be affirmed unless he has violated the Manual provisions, and since it is the Manual provisions which the woman finds objectionable, the hearing is of little avail.

(b) *The appropriateness of a divorce*: In order to determine the desirability of a divorce, an attorney must ask himself what benefits (in addition to ADC eligibility) will accrue to his client. What disposition of persons and property is the court likely to make as part of an absolute divorce decree? Separation of the parties? An order to the defendant to vacate the premises? Child custody? Child support? In the case posed the parties are already separated. The woman is already in possession of the premises. She already has custody of the children, and since the absent husband usually cannot be found and served, a meaningful support order obviously is not possible.¹⁵ Theoretically, a divorce would make it possible for the woman to remarry, but in reality the marital opportunities available to a woman with numerous children and little money are exceedingly limited. It is fair to say, therefore, that virtually the only thing the woman would gain by a divorce would be ADC eligibility.

IV. Constitutionality of the Pre-1969 Law

A. Under the Due Process Clause

It appears clear that state actions affecting governmental benefits are restricted by the due process clause of the Fourteenth Amendment. This is true whether such benefits are considered rights or privileges. In public assistance cases the denial of benefits must meet due process standards;¹⁶ and to satisfy the requirements of due process, the standards established by the rules must bear some reasonable relation to actual fact.

¹³ *Supra* note 10.

¹⁴ *Supra* at 6 and 7.

¹⁵ Even if the husband could be found, his duty to support would probably not be based on the divorce decree, but instead on his independent duty to support under the Uniform Reciprocal Support Act.

¹⁶ *Slochower v. Board of Education*, 350 U.S. 551, 555 (1956); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Fleming v. Nestor*, 363 U.S. 603, 611 (1960); and *Bolling v. Sharpe*, 347 U.S. 497 (1954).

The fact to be determined in this instance is the need of the child.¹⁷ A child becomes needy by virtue of being deprived of parental support or care. To deny that such deprivation could occur in less than six months' time is to ignore the facts of life. If it is conclusively presumed that no deprivation or resulting need exists until six months have passed, then the real fact to be determined is the passage of time, not the actual deprivation or need of the child. The applicant has no opportunity to rebut this arbitrary standard without showing that:

1. a divorce has been filed against the absentee parent;
2. said parent is legally restrained for a term of six months;
3. there is no husband or acknowledged father;
4. or that non-support or abandonment charges have been filed against the parent who has been absent for three months or longer.

If any of the above four items were shown as exceptions to PAM § 331.2(4),^{17a} then it was conclusively presumed that the requisite deprivation and need existed. Otherwise, the contrary was presumed. In the opinion of this writer, to assert that actual need cannot exist in the absence of certain arbitrarily defined situations is to engage in sophistry and to act very rigidly.

It is clear that the arbitrary standards set out in the pre-1969 Manual had little direct relation to actual fact. Consequently, it would appear that constitutional issues based on due process grounds could have been raised with some prospects of success.

B. Under the Equal Protection Clause

Discrimination between members of a given class should be forced to withstand scrutiny in the light of the equal protection clause of the Fourteenth Amendment. An interested person can demand that there be some reasonable justification for distinguishing between members of a given class. This leads one to ask whether there is any reasonable justification for distinguishing between one needy child and another and, if so, whether it is reasonable to base such a distinction on some differing relationship between their parents.

¹⁷ According to the Code, the benefits are contingent only on the availability of revenues and the need of the child if the § 5107.03 provisions are met: i.e., deprivation of parental support or care by reason of death, continued absence, or incapacity of a parent, *supra*, notes 5, 6, 7.

^{17a} *Supra*, note 10.

Under the Public Assistance Manual needy children qualified almost immediately if they were children with one deceased parent,¹⁸ with an employable parent who was unemployed,¹⁹ with a parent who was physically or mentally incapacitated,²⁰ with parents who were divorced or legally separated,²¹ with a parent in prison for six months,²² or with no admitted father.²³ However, if they were needy children who were simply abandoned, they were forced to wait six months before they became eligible.²⁴ In other words, if a needy child was legitimate, and if his father was not incarcerated, and if his mother had not divorced his father (etc.), then such needy child had to wait half a year for eligibility.

The effect was (and still is) that “[d]estitute and impoverished citizens whom legislatures seemingly would intend to be the beneficiaries of welfare statutes are often denied aid because they are unable to prove completely their qualifications for assistance.”²⁵ Given the fact of destitution or impoverishment, it would seem that the only possible reason why such citizens could not prove their qualification would be that the standards applied have no necessary relation to destitution or impoverishment—no necessary relation to actual fact.

A suit has recently been filed in the U.S. District Court for the Southern District of Ohio, Eastern Division, challenging the legality of § 331.2 of the Ohio Public Assistance Manual. This case, *Evans v. White*,²⁶ raises issues based not only on due process and equal protection grounds, but also on Fourth Amendment right-to-privacy grounds.²⁷ Plaintiffs’ cause also proceeds on the argument that defendants’ application of § 331.2 PAM is in

¹⁸ Ohio Rev. Code § 5107.03, *supra* note 6;

PAM §§ 330, 331, *supra* notes 7, 8;

PAM § 331.1 *Death*: “The death of either parent establishes that a child is deprived of parental support or care.”

¹⁹ Ohio Rev. Code § 5107.03, *supra* note 6;

PAM §§ 330, 331, *supra* notes 7, 8.

²⁰ Ohio Rev. Code § 5107.03, *supra* note 6;

PAM §§ 330, 331, *supra* notes 7, 8.

²¹ PAM § 331.2(1), *supra* note 10.

²² PAM § 331.2(2), *supra* note 10.

²³ PAM § 331.2(3), *supra* note 10.

²⁴ PAM § 331.2(4), *supra* note 10.

²⁵ 115 U. Pa. L. Rev. 1807, 1808 (1967).

²⁶ Case No. 64-146, filed May 14, 1969. This case has not yet reached the merits.

²⁷ Point V of plaintiff’s Memorandum brief, p. 16.

derogation of the Social Security Act of 1935.²⁸ The plaintiff, on behalf of herself and all others similarly situated, is praying for a declaratory judgment and injunctive relief against the enforcement of this section.²⁹ Other cases have recently been filed on the same or similar issues.³⁰ All challenge the divorce-or-waiting period regulations of state ADC manual provisions.

Such litigation indicates that public administration regulations, while intended as administrative refinements of existing law, are suspected by the poor of being contrary to the actual intent of our welfare law.

V. The 1969 Revision

A few months ago all welfare workers who use the PAM were sent a letter³¹ containing a revision of § 331.2 to take effect on August 1, 1969. The new PAM, § 331.2, reads as follows:

Continued Absence from the Home. Continued absence means that one of the parents is out of the home for three months or more, and, as a result the physical care, maintenance, and guidance of the child has been interrupted or terminated.

This requirement is met if the parents are unmarried and have not lived together as man and wife, or if one of the parents has been sentenced to a term of three months or more in jail, workhouse, or penal institution, or if a parent has been physically absent from the home for three months or more.

This revision, while more liberal than the original regulation, reflects the same kind of bureaucratic rigidity that afflicted the latter. The same objections raised against the old section can be directed against its successor. There is the same premium put on illegitimacy, and there is a similar minimum-time-period re-

²⁸ Point VI of plaintiff's Memorandum brief, p. 18.

²⁹ Plaintiff's petition (Case No. 64-146), p. 1. "This is an action for injunctive and declaratory relief authorized by Title 42, United States Code, Sections 1983 and 2000d to secure relief against the enforcement of those parts of Section 331.2 of the Public Assistance Manual of the State of Ohio Department of Public Welfare which denies plaintiffs the equal protection of the law and due process guaranteed under the Fourteenth Amendment, infringes upon plaintiff's right to privacy protected by the Fourth Amendment and, in addition, is in violation of the Social Security Act of 1935."

³⁰ *Howell v. Department of Social Welfare*, DC Cal., ND, No. 46853 (1968); *Jenish v. California*, DC Cal., ND, No. 48462 (1968); and *Damico v. California*, 389 U.S. 416 (1967).

³¹ Manual Transmittal Letter No. 105, dated July 24, 1969. Subject: Change in Manual Section 331.2, continued absence from the home.

quirement. If the revision constitutes an attempt to forestall judicial attacks on the regulations, it will probably fail to accomplish this objective. However, given the interpretation and resulting application of the old manual section, it is not difficult to understand how such a revision would be formulated.

Probably the most significant mitigating change in the new section is that it no longer contains any forced-divorce provisions. The 1969 revision makes the procurement of a divorce an irrelevant factor so far as eligibility is concerned.³² In this respect the revision undeniably has merit, but the section as a whole still arguably fails to effectuate the basic intent of the welfare law.

VI. Chapter 400 of the Public Assistance Manual

Two actions have recently been instituted challenging another section of the PAM Chapter 400.³³ This chapter of the Manual contains regulations setting forth schedules for determining need. Need is supposed to be determined on a standard and uniform basis, so that families containing a given number of individuals will receive, generally speaking, approximately equal allowances. The two cases referred to challenge the manner in which plaintiffs' ADC budgets were computed by the administrator. In both instances plaintiffs had their ADC budgets reduced because their families included recipients of Social Security benefits.

In *Hill v. Kibler and White*³⁴ the plaintiff is the mother of nine children, two of whom are receiving Social Security benefits owing to the death of their father. The remaining seven children are receiving ADC benefits due to the continued absence from the home of their father. (Mrs. Hill remarried after the decease of her first husband and was subsequently divorced from

³² The Summit County Welfare Department is currently applying a mixture of both the old and new manual sections. While the new three-month time standard is being used, the waiting period can nevertheless be short-circuited by the prompt filing of a divorce. This practice is probably made necessary by the county's economic plight. The county is forced by its straitened financial situation to reduce the county-supported General Relief rolls. It therefore has adopted a policy which encourages applicants to qualify for the federally-supported ADC rolls.

³³ *Billings v. Minter and White*, Case No. 873118, filed March 19, 1969 in the Cuyahoga County Court of Common Pleas, and *Hill v. Kibler and White*, Case No. 276253, filed May 15, 1969 in the Summit County Court of Common Pleas. Neither case has reached to the merits as yet.

³⁴ *Supra* note 33.

her second husband.) The Summit County Welfare Department concluded that the Social Security moneys received by the two children should be considered as income for the entire family. It therefore reduced her ADC allowance accordingly. Mrs. Hill thereupon instituted an action for a declaratory judgment and injunctive relief, alleging that defendant's actions in reducing her budget violated:

1. the "actual need" intendment of Ohio Rev. Code § 5107.04;³⁵
2. Tit. 42, United States Code, § 408,³⁶ and Tit. 18, United States Code, § 2;³⁷
3. the Ohio Constitution, Art. I, § 2; and
4. the United States Constitution, Amendment XIV.

In the other case, *Billings v. Minter and White*,³⁸ the plaintiff charges that the policies of the welfare administrators in Cuyahoga County are arbitrary and that these policies bring about a misappropriation of Social Security funds.

Since there are no decided cases in Ohio discussing the issues raised by the *Hill* and *Billings* cases, it is impossible to predict their outcome. However, it is gratifying to see that such issues are now being aired in court. The decisions may disclose that, contrary to the beliefs of many welfare administrators, the PAM may not represent a proper statement of what our welfare law intends.

³⁵ Section 5107.04 provides in part:

"The amount of aid payable under Section 5107.01 to 5107.16, inclusive, of the Revised Code, in respect to any children living in the same home shall be determined on *the basis of actual need* and shall be sufficient to provide support and care requisite for health and decency, taking into account the resources and income from other sources of such children, their parents, and the relatives in whose home they are living." (Emphasis added.)

³⁶ Title 42, U.S.C. § 408, provides, in part:

"Whoever—

(c) having made application to receive payment under this subchapter (Old Age, Survivors and Disability Insurance) for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both."

³⁷ Title 18 U.S.C. § 2:

(a) "Whoever commits an offense against the United States or aids, abets, counsels, commands, *induces*, or procures its commission, is punishable as a principal." (Emphasis added.)

³⁸ *Supra* note 33.

VII. Forecast for the 1970's.

As the Manual becomes more widely applied, due to the increase in population and the migration from rural areas into the cities, there will probably be more litigation over its provisions and its application. As the Manual begins increasingly to be litigated, still more people will inevitably become aware of their rights under the law; hence questionable welfare practices will be more likely than formerly to be challenged. This could become a self-generating process having a cumulative effect: Litigation breeds increased attention and knowledge; increased knowledge breeds further litigation. In short, there is every reason to suppose that this area of the law will henceforth be much less quiescent than it has been.

The practicing attorney may wonder what significance all this has for him, since most litigation in this field involves legal aid (or Office of Economic Opportunity) lawyers on one side and the local prosecutor or state attorney general on the other. However, the legal problems which plague the poor are not restricted to welfare agency practices. For example, in a forcible entry and detainer action³⁹ which has just been appealed to the Ninth Judicial District Court of Appeals,⁴⁰ the appellants are asserting the equitable defenses of constructive and retaliatory eviction. Thus simple eviction cases will perhaps not be so simple in the future. In addition, it seems probable that increased legal attention will be focused on collection and credit practices in the next few years. Also, efforts to locate public housing projects in middle and upper class residential areas appear likely to produce a flurry of litigation in the early 1970's. In sum, the problems of the poor appear destined to have a significant impact on many areas of private law practice in the next decade.

³⁹ *Hayden v. Foerg & occupants*, Case No. 467332, filed in the Municipal Court of Akron June 4, 1969 under Ohio Rev. Code § 1923.

⁴⁰ Notice of Appeal filed July 8, 1969.

VIII. Conclusion.

Quite apart from conflicting social philosophies, welfare is, to the extent that the law so decrees, a right. However, an examination of the operation of our welfare program discloses that there is some confusion as to how far an applicant's (or recipient's) rights extend and to what degree his rights may be determined—and restricted—by administrative practices and administrative judgments.

It is the lawyer's function to define and argue the issues raised by those who consider themselves aggrieved by the welfare department's actions. The issues raised in a number of cases now pending (or being appealed) appear to have some merit; and regardless of the cases' ultimate disposition, the attorneys who are trying them will have performed a public service by helping to clarify some of the ambiguities now existing in this area of the law.

C. DAVID HENSAL