

COMMENTARY

WELFARE REFORM AND LOCAL ADMINISTRATION OF AID TO FAMILIES WITH DEPENDENT CHILDREN IN VIRGINIA

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And the people who have the doing in charge, whether they be judges or sheriffs or clerks or jailers or lawyers, are officials of the law. What these officials do . . . is to my mind the law itself.

—Karl Llewellyn
THE BRAMBLE BUSH

COMPREHENSIVE welfare reform has been a prominent issue at the national level in the past two Congresses. Both the Administration and the Congress have offered major proposals, and other suggestions for revision of the present welfare system have come from persons and groups ranging from conferences of governors and mayors to the League of Women Voters and the National Welfare Rights Organization.¹ Although programs such as Old Age Assistance, Aid to the Permanently and Totally Disabled and Aid to the Blind are involved in those proposals, the major issues revolve around the Aid to Families with Dependent Children Program (AFDC). This program has been plagued by burgeoning rolls, lack of state funds and an impossible work load on

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¹ A status report on issues and lobbying efforts may be found at 29 CONG. Q. REV. 618 (1971).

agency staff. It further suffers from the continuing inability of social casework and manpower programs to provide an exit from dependency wide enough to accommodate very many welfare families. These difficulties are, indeed, very real. In addition, a more probing analysis of AFDC finds even deeper problems concerning the "rights"² of recipients and the difficulties of protecting those rights in a system of broad standards, wide discretion and a fundamentally coercive relationship between the dispenser and the recipient of sustenance.³

The extensive discussion of the welfare problem has, however, given little attention to the potential impact of any program that would unify the administration of welfare benefits. The congressional debate has focused on questions such as the level of benefits, funding, broader inclusion of the working poor, and manpower development and work-incentive programs. The initial proposals for the Family Assistance Plan left the question of who is to administer the program within the sole discretion of the Secretary of HEW.⁴ This lack of attention to who makes welfare payments and to the administrative structure through which they are made suggests that such problems are of little importance in relation to the substantive ills of the present system.

Although commentators concerned with enforcement of "rights" and "legality" in administration have recognized the potential for wide varia-

² Reich, *The New Property*, 73 YALE L.J. 733 (1964); Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963); Taylor, *The Nature of the Right to Public Assistance*, 36 SOC. SERV. REV. 265 (1962); tenBroek & Wilson, *Public Assistance and Social Insurance—A Normative Evaluation*, 1 U.C.L.A. L. REV. 237 (1954).

³ Handler, *Controlling Official Behavior in Welfare Administration*, 54 CALIF. L. REV. 479 (1966); Handler & Hollingsworth, *Reforming Welfare: The Constraints of the Bureaucracy and the Clients*, 118 U. PA. L. REV. 1167 (1970).

⁴ The provisions of the initial FAP along with its June and October 1970 revisions can be found in a November 5, 1970, Committee Print for the Senate Finance Committee entitled H.R. 16311, The Family Assistance Act of 1970. Administrative provisions are at pp. C53-C58. Even the "revised revision" of FAP permitted the Secretary to arrange for payments by contract with the states, the terms of which could range from full federal administration to state administration of all payments save those to intact family units.

However, the present embodiment of the Family Assistance Plan, H.R. 1, 92d Cong., 1st Sess., as amended by the House Ways and Means Committee and reported to the House on May 26, 1971, makes some significant changes in the Administrative provisions of FAP. In its present form H.R. 1 does not authorize agreements with states for the latter to administer the payment of federal benefits, and the bill provides some financial incentive to states to contract with the Secretary of HEW for federal administration of any state welfare benefits which would supplement Family Assistance Plan payments. H.R. 1, § 503, 92d Cong., 1st Sess.

tions in program operation, they have offered little evidence of major differences in the administration of the AFDC program from one welfare office to the next. To be sure the problem of enforcement, or non-enforcement, of federal standards in AFDC grants-in-aid to the states has received widespread attention.⁵ This concern has manifested itself in a series of lawsuits challenging the conformity of state standards to federal law⁶ and in a sudden upsurge in activity by HEW to force compliance.⁷ But even if state law conforms to federal requirements, there remains the question, what impact do local welfare officers have on the application of state law in their respective jurisdictions? The most comprehensive examination of local welfare administration yet undertaken, the study by Handler and Hollingsworth of the Wisconsin AFDC program, found virtually no evidence that local administration produces significant variations in the application of state law.⁸

⁵ See, e.g., W. BELL, *AID TO DEPENDENT CHILDREN* (1965); M. DERTHICK, *THE INFLUENCE OF FEDERAL GRANTS* (1970); Rabin, *Implementation of the Cost-of-Living Adjustment for AFDC Recipients: A Case Study in Welfare Administration*, 118 U. PA. L. REV. 1143 (1970).

⁶ E.g., *Lewis v. Martin*, 397 U.S. 552 (1970); *Rosado v. Wyman*, 397 U.S. 397 (1970); *King v. Smith*, 392 U.S. 309 (1968). See also Barrett, *The New Role of the Courts in Developing Public Welfare Law*, 1970 DUKE L.J. 1.

⁷ Since 1969 HEW has scheduled eight hearings on non-conformity of state plans with federal requirements and has ordered funds withdrawn from two states. This action follows a long period of reluctance to employ the threat of fund cut-off or to schedule conformity hearings. See ADVISORY COMMITTEE ON INTERGOVERNMENTAL RELATIONS, STATUTORY AND ADMINISTRATIVE CONTROLS ASSOCIATED WITH FEDERAL GRANTS FOR PUBLIC ASSISTANCE (1964).

⁸ Handler & Hollingsworth, *supra* note 3. The article is a capstone piece which draws on an extensive survey of six county welfare agencies and their clients in both rural and urban Wisconsin. Reports of various aspects of this study have appeared in the literature as noted, *id.* at 1169 n. 12. The authors found that rural recipients had stronger attachments to their communities and more active social lives than urban recipients, Handler & Hollingsworth, *The Characteristics of AFDC recipients: A Comparative View* 41-69 (1969) (Institute for Research on Poverty, Discussion Paper), and that urban dwellers made more use of special grants. Handler & Hollingsworth, *The Administration of Welfare Budgets: The Views of AFDC Recipients*, 5 J. OF HUM. RES. 208 (1970). However, they found that the administration of the basic "means test" or eligibility standards showed no substantial variation between rural and urban counties in Wisconsin. *How Obnoxious is the "Obnoxious Means Test"? The Views of AFDC Recipients*, 1970 WIS. L. REV. 114. Although one might have supposed that recipients in a rural setting would feel greater social pressures to get off relief and therefore a greater sense of stigma in accepting welfare, this was not the case. Handler & Hollingsworth, *Stigma, Privacy, and Other Attitudes of Welfare Recipients*, 22 STAN. L. REV. 1, 5 (1969).

Alan Keith-Lucas, writing in 1957 when welfare administration was presumably much closer to its local and private-charity roots than it is today, was concerned because such strong philosophical continuity existed among welfare workers that welfare decision-

The findings of this study of five Virginia welfare departments and their clientele are somewhat different. In these jurisdictions local control is prevalent, and those exercising that control hold divergent views on how a welfare program should be administered. Our basic finding is that welfare in the rural departments studied is essentially a different program from that in the urban departments we surveyed, although all these jurisdictions are contiguous and none is beyond a thirty-minute drive from any other. This study produces no conclusive explanation of these differences. But if the survey presents even a partially true picture of welfare administration in the areas surveyed, and if that picture is even vaguely representative of local administration elsewhere, unification of administration may be the major neglected issue in welfare reform.

THE STUDY FOCUS AND METHODOLOGY

The survey included Department A, a city department; Department B, located in an urbanized county; and three rural county departments—C, D and E. The relevant characteristics of these departments and their jurisdictions, as of June 1970, are outlined in the following table:

Department	Population of Jurisdiction	Per Capita Income	AFDC Staff	AFDC Cases	Persons Receiving Assistance	Average Monthly Grant Per Person
A	40,000	\$3,200	6*	171	649	(A) \$43.41
B	40,000	2,700	6*	102	406	(B) 34.95
C	5,000	1,950	3**	40	164	(C) 36.36
D	7,400	1,550	3**	11	45	(D) 25.99
E	13,500	2,000	3**	26	132	(E) 26.12

* Superintendent, supervisor, intake worker, eligibility technician, two caseworkers.

**Supervisor, eligibility technician, caseworker. In these counties this staff handles adult categories as well as AFDC. Department E also has a medicaid technician and an adult services worker.

The objectives of the study of these departments were (1) to determine the extent to which there are pronounced differences in the attitudes of the persons in charge of these local departments and (2) to

making was apparently much less responsive to the "political will" of the state or locality than it was to the concerns of the social work profession. Although he found variations in welfare practices, Keith-Lucas concluded that the differences resulted primarily from differences in the personalities of caseworkers and from some anticipatory reaction to a hypothetical, but unknown, local sentiment. A. KEITH-LUCAS, DECISIONS ABOUT PEOPLE IN NEED 211-40 (1957).

discover the effect that these attitudes have on the operation of the welfare program in the respective jurisdictions.

Interest in the variations in welfare administration arose in part from the realization that the statutes and regulations that establish and describe the Virginia welfare system do not clearly define the respective roles of local and state administrations in the formulation of welfare policy. Although the Virginia Manual of Public Assistance offers a detailed description of acceptable policy and practice, the administration of public welfare rests with local departments that are politically responsible to local officials (either welfare boards or a city or county executive officer).⁹ This system represents the culmination of several centuries' development of public welfare in Virginia.¹⁰ The history begins with private and local funding and administration of welfare. It ends with the present arrangement in which the increasing number of requirements to obtain federal matching funds produces continuous dissemination of relatively comprehensive standards from the State Department of Welfare and Institutions to local welfare departments.¹¹ Yet, these local departments remain structured *as if* they were to make policy rather than merely technical decisions, and localities continue to contribute local funds to defray a portion of welfare costs.¹²

Two other factors also suggested the need to examine the system of welfare administration in Virginia. First, reports from students engaged in representing welfare claimants in state fair hearings revealed that in some localities this tension between local and state control was reaching a critical stage. Second, considerable divergencies in caseloads and per person payments exist among Virginia's one hundred twenty-five wel-

⁹ VA. CODE ANN. §§ 63.1-38 to -67 (1968), *as amended*, VA. CODE ANN. §§ 63.1-38 to -67 (Supp. 1970).

¹⁰ See generally J. CEPURAN, PUBLIC ASSISTANCE AND CHILD WELFARE: THE VIRGINIA PATTERN, 1646 TO 1964 (1968).

¹¹ Federal policy is contained in 42 U.S.C. §§ 601-609 (Supp. V 1970). (Subchapter IV of the Social Security Act ch. 7), 45 C.F.R. §§ 201.1-280.12 (1970), and HEW, HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION [hereinafter cited as HANDBOOK]. Technically these standards (with the exception of certain nonmandatory provisions) are requirements for "state plans" of public assistance. The Virginia state plan consists of its statutory, VA. CODE ANN. §§ 63-1 to -385 (1968), *as amended*, VA. CODE ANN. §§ 63-1 to -385 (Supp. 1970), and regulatory, MANUAL OF POLICY AND PROCEDURE FOR LOCAL WELFARE DEPARTMENTS (1970) [hereinafter cited as Va. Manual], materials, which must not conflict with federal policy if federal grants-in-aid are to be available.

¹² In fiscal 1970, Virginia's AFDC program was supported 64 percent by federal funds, 22 percent by state funds, and 14 percent by local funds. (The average percentages for all state programs are 55 percent, 35 percent, and 11 percent, respectively.) NATIONAL CENTER FOR SOCIAL STATISTICS, REPORT F-1 (FY 70), Table 7 (1970).

fare departments even when population, per capita income and other qualifying factors are considered.¹³

The research on local administration was conducted in a systematic but less than wholly scientific manner. Apart from a survey of the existing literature and data collected by the Virginia Department of Welfare and Institutions, our principal research tool was the personal interview. In each locality we interviewed every member of the local welfare board, all departmental staff and a sample of welfare recipients, including persons whose assistance had been terminated or who had been rejected after application for assistance. The recipient sample was not drawn in accordance with recognized sampling techniques because we did not have access to a list of persons on welfare.¹⁴ Consequently, interviewers sought out recipients on the basis of information gained from a variety of sources. For example, Department B cooperated with us by sending letters to its recipients inquiring whether they would consent to an interview and then supplying us with the positive responses. Because all our interviewers used the same "discovery" techniques and were able to interview the caretaker adult in a large percentage of AFDC cases in each locality, we believe that the results of the study are sound—at least for purposes of comparison among the departments involved. At any rate the findings have more than statistical significance.

After interviewing a recipient each interviewer reviewed the eligibility and payments portion of that person's case file, if written consent to do so had been obtained. (This case file review was not conducted in Department E because of the Superintendent's refusal to allow even the recipients themselves access to their files.)¹⁵ Students agreed to inform the recipient should irregularities appear from the file in the handling of his case and to provide representation should a fair hearing result from further inquiry.

¹³ A. Schorr & C. Wagner, *Cash and Food Programs in Virginia, A Study for the U.S. Senate Select Committee on Nutrition and Human Needs*, Sept. 23, 1969.

Comparative data is compiled by the Department of Welfare and Institutions. See, e.g., *PUBLIC WELFARE STATISTICS*, Vol. XXXI, No. 2, June, 1970.

¹⁴ State and federal requirements provide that the information is to be kept confidential. 42 U.S.C. § 602(a)(9), as amended by Revenue Act of 1951, ch. 521 § 618, 65 Stat. 569; VA. CODE ANN. § 63.1-53 (Supp. 1970); 36 FED. REG. 3860-61 (1971) (new C.F.R. § 205.50).

¹⁵ This was clearly a misreading of the Va. Manual §§ 105.2, 105.5, but was supported by the state agency official to whom an appeal was made.

WELFARE BOARD MEMBERS

Welfare boards in Virginia may be composed of either three or five members who are appointed in counties by the Board of Supervisors or the Circuit Judge, and in cities by the City Council. These boards may serve either as decision-making or as merely advisory bodies.¹⁶ In our contacts with board members we sought to discover their general attitudes toward the welfare system and their specific views of their role as board members in it.¹⁷ We made an attempt to check the interviewer's impressions against minutes of board meetings and staff perceptions of board members. Minutes were unavailable in some counties because the minute books are not separated into public and executive sessions. As a result, statutory requirements of confidentiality concerning recipients¹⁸ prevent access to records that are meant to be available to the public.¹⁹ However, even where available, public meeting minutes tend to contain relatively formal and unenlightening entries. This absence of real substance in the publicly available minutes suggests that policy issues are discussed as they come into focus through discussion of particular cases in executive sessions.

Urban Boards

Although the board for Department A is the only "advisory" board surveyed, the views of its members on the role of the board or on the welfare system generally do not differ markedly from the views of the members of the urbanized county "administrative" board. In both cases board members are generally very interested in keeping down costs and in the problems of illegitimacy, laziness and fraud among recipients. However these "anti-welfare" attitudes are tempered in virtually all cases by the members' recognition (1) that local policy control is virtually non-existent and (2) that the "character defects" approach to welfare administration has very limited application to recipients in *their* locality. At least one person on Board A seemed very much in the mainstream of contemporary welfare law. He explicitly character-

¹⁶ VA. CODE ANN. §§ 63.1-38 to -67 (1968), as amended, VA. CODE ANN. §§ 63.1-38 to -67 (Supp. 1970).

¹⁷ Aside from personal data (occupation, length of service) board members were asked four general questions pertaining to (1) the goals of the welfare system, (2) evaluation of the present welfare program, (3) the role of the local board in administration and policy and (4) proposals for revamping public assistance at the national level.

¹⁸ VA. CODE ANN. § 63.1-53 (Supp. 1970).

¹⁹ VA. CODE ANN. §§ 2.1-340 to -346 (Supp. 1970).

ized public assistance as a statutory right and strongly opposed invasion of recipients' privacy.²⁰ Only one member of either urban board expressed opinions that seriously deviated from generally accepted welfare practices, and the interviewer thought that his suggestion of the "gray squirrel" remedy (sterilization as a condition for receipt of public assistance) was not a serious recommendation.

Because these board members recognize that federal and state statutes and regulations virtually eliminate their power to set eligibility standards, they rely heavily on the welfare staff to make the eligibility determinations and limit their own activity in this area to carping about costs. Moreover, they devote substantial time to the consideration of alternative means to reduce expenditures. This discussion usually consists of proposals for greater administrative efficiency and for services which will help recipients to become self-supporting. Certain members of these boards offered creative suggestions for the development of a centralized and intelligible social services program and were willing to make additional expenditures of non-reimbursable local funds to provide job training for recipients. However, no board member who exhibited this "productive-work" orientation revealed a similarly intense concern with adequate day or home care for dependent children. Provision of such care is the central focus of AFDC and an integral part of the federal work incentive program.²¹

Rural Boards

In sharp contrast to the urban boards, the dominant attitudes of the three rural welfare boards are basically anti-welfare. Moreover, the members of rural boards are willing to interpose local policy control over the welfare system by retaining superintendents with similar views. In one instance, for example, a board fired a superintendent who sought to follow the letter of the law. Whereas the urban welfare board member is sometimes frustrated by his lack of power, the rural board member tends to reject the incongruity of position without power by making local policy, or by ratifying a staff approach that conflicts with the letter or spirit of state and federal standards.

²⁰ Indeed the Supreme Court may now have less concern for recipients' privacy than does this board member. See *Wyman v. James*, 400 U.S. 309 (1971).

²¹ 42 U.S.C. §§ 601, 602(a)(15)(A)-(B), (19) (Supp. V 1970); DEPARTMENT OF LABOR, WORK INCENTIVE PROGRAM HANDBOOK § 412 (1968). In the localities included in this study there is no WIN program, but the Virginia "Work Rule" may apply. Va. Manual § 305.4. A recent suit has successfully challenged the validity of this latter provision. *Woolfolk v. Brown*, 325 F. Supp. 1162 (E.D. Va. 1971).

The attitudes held by a number of these rural board members display a startling indifference to legal requirements. By and large they do not feel compelled to follow state or federal policy in situations where they consider the policy unsuited to "local conditions." ("There's the law and then there's how you do things.") Typically these boards not only consider AFDC recipients lazy and immoral ("She [a recipient] oughta be taken out and thrown down and worked on like a dog."), but they also feel that the permissive welfare system destroys the local economy. For such boards, the only effective welfare reform is the return of all power to the local community which "knows these people" and thus can better determine their eligibility for welfare. To solve the welfare problem one local board chairman offered two proposals that he would implement if the State permitted him to do so: (1) sterilization as a condition of eligibility and (2) a return to the poorhouse system (because "people's relatives wouldn't let them go there").

The dominant members of rural boards often seem puzzled by the reversal of their decisions in state fair hearings. For example, they do not understand why the state department cannot accept that local people find it insufferable to pay welfare to people living in new trailers that are being purchased on time or to continue assistance to a recipient who has been seen buying beer.

Although not all members of the rural boards are overtly anti-welfare, the dissenters appear to have little influence and seldom advance any of the "progressive" notions found among their brethren on the urban welfare boards. The board in County D seems less willing to flout state policy directly; however, the members know so little about state law requirements that their unwitting errors may pose serious problems. Two members of this three-man board admittedly know "little" or "nothing" about state law or policy. The third member, clearly the leader in decision-making, seemed, on the one substantive issue on which he commented, the Virginia work rule, to confuse the question of whether a person had "refused suitable employment" with whether he was able-bodied. Lack of knowledge of state law is in fact characteristic of all the rural boards surveyed. Their major sources of information on state law seem to be (1) opinions reversing their decisions in the relatively infrequent appeals by persons denied aid and (2) what they are told by the staff.

WELFARE STAFF

Despite the likelihood that the attitudes of the superintendent and

staff reflect those of the board members; divergent views among welfare personnel are nonetheless possible. Furthermore, differences between enunciated goals and actual program operation sometimes appear. In addition to these reasons for separate interviews of staff members, only the welfare staff could provide information on how these programs were operating in fact. We hoped that the staff, in answering questions on program operation,²² would reveal their general attitudes toward welfare and welfare recipients. For the most part, the superintendents and the staff personnel were very cooperative and again the survey results break down fairly easily into urban and rural patterns.

Urban Staff

The staff members of the urban departments generally have reached a fairly high level of educational attainment (only one staff person without a bachelors degree and one with an M.A.) and have less "local" backgrounds than the rural welfare staff. The presence of a reasonably high turnover among urban personnel suggests that they rarely act on the basis of "knowledge" obtained outside the standard administrative routine of the department.

The staffs of both urban departments seem familiar with state law and with the regulatory description of their respective duties. The very high turnover rate in Department A makes it a less "professional" department than B, but this comparison recognizes that Department B is a remarkably well run office. In both departments, and particularly in B, interviews with the staff revealed genuine concern for the plight of the welfare client and sensitivity to the recipient's problems. None of the staff expressed moral judgments of the recipients that might affect decisions on eligibility. Moreover, in order not to discourage applications for assistance, they are careful to administer requirements, such as the Virginia work rule²³ and pursuit of responsible relatives,²⁴ in a sen-

²² We asked the long-suffering staff members seventy-two standardized questions concerning their administration of various aspects of the AFDC program.

²³ For example, in these departments the staff does not attempt to put mothers of small children into work or training programs unless they request help in finding work, although the state regulations do not exclude these recipients from the work requirement. Staff members justify this approach on grounds of the limited employment opportunities for most of these women and the virtual unavailability of adequate (*i.e.*, licensed) day care services. Va. Manual § 305.4 seems broad enough to permit this policy.

²⁴ The staff estimates whether there is any reasonable chance of producing steady support from the responsible relative (father) and will not require pursuit of a man who has a legal union with a woman other than the applicant for fear of destroying

sible manner. There is little fear of recipient fraud, and staff personnel at least pay lip service to providing social services. In short, staff members see their role as one of helping recipients with their problems.

Rural Staff

The staff members of the rural departments tend to have local backgrounds, to hold no degree beyond a high school diploma and to serve a long tenure. The superintendents in Departments D and E between them have fifty-six years of service in their jobs. There is little doubt that the superintendent—and no one else—is in charge of these two departments. With only one exception the staff personnel echoed the superintendent's views. The typical rural staff member considers welfare too permissive and believes that all requirements should be strictly construed against the applicant. This attitude places particular emphasis on work ("We're worse than hawks on work"), and the staff "knows" who can work and who cannot. Some members of the staffs in these departments made no secret of their reluctance to inform recipients or applicants of their rights to apply for aid,²⁵ to appeal adverse decisions²⁶ or to obtain special need items²⁷ (e.g., furniture, school supplies) beyond the general description in the flyers prepared by the state. Such behavior hardly represents a neutral position between encouraging and discouraging the exercise of statutory rights, especially when the same

a second family to feed the first. This is perhaps permissible under Va. Manual §§ 305.8, 603.1, but it would require a very narrow definition of "desertion." Petitions for support are required as a condition of assistance where desertion is involved.

²⁵ 42 U.S.C. § 602(a)(10) (Supp. V 1970); 36 Fed. Reg. 3864-65 (1971) (new 45 C.F.R. § 206.10) (formerly IV HANDBOOK §§ 2200, 2300); Va. Manual § 601.1.

²⁶ *Goldberg v. Kelly*, 397 U.S. 254 (1970); 42 U.S.C. § 602(a)(4) (Supp. V 1970); VA. CODE ANN. §§ 63.1-116 to -119 (1968), as amended, VA. CODE ANN. § 63.1-116 to -119 (Supp. 1970); 36 Fed. Reg. 3864-65 (1971) (new 45 C.F.R. § 206.10) (formerly IV HANDBOOK §§ 2200, 2300); Va. Manual §§ 801.1-13; Department of Welfare and Institutions, Bulletin No. 513, July 24, 1970 (hereinafter cited as Va. Bulletin 513).

²⁷ Payments under the Virginia AFDC program cover "Basic Requirements Items" and "Special Circumstances Items." Payments for the former go to all recipients based on their relative need. They include a "standard basic allowance" covering food, clothing, household supplies, personal care, and school supplies, and a shelter allowance to cover costs of rent or mortgage payments and utilities. For a family of four with no other income the standard basic allowance would not exceed \$236.00 per month.

"Special Circumstances Items" include a number of needs which are common but not applicable to everyone, e.g., school books, gym fees, school transportation, furniture, appliances, telephone, dental care, medical transportation. Payments for "Basic" plus "Special" items may not exceed \$305.00 per month for any family, however large. See generally, Va. Manual § 303.

staff describes its clients, rightly or wrongly, as "90 percent mental defectives." Clients report, for example, that in at least some cases these offices do not tender application forms without interrogating the applicant. This questioning may lead to an oral denial of eligibility, referral to a food program or instructions to look for work, instead of producing an application for welfare. If no application is taken, there is, of course, no recorded action that must be justified to state or federal reviewers. Moreover, a formal notice of denial, which must contain a stated reason for ineligibility and notice of a right to appeal if the state form is used, is unnecessary when no application is taken.

Various comments of the staff in Departments D and E suggest that those personnel use the work rule, relative responsibility and other requirements to deter or to delay the receipt of assistance. The welfare staff may hold an application in abeyance for some time while the applicant checks out the availability of employment, proves a relevant physical disability, or seeks out child care arrangements. If an applicant determines, for example, that putting her children in the only available place, her sister's home with five other children, is unsuitable for her children and an unreasonable imposition on her sister, the agency may decide otherwise—or at least suggest that it will do so with sufficient force to cause withdrawal of the application. Similarly, although the law requires that assistance be provided when it is impossible to determine whether there is a responsible relative to provide support,²⁸ an applicant's attempts to locate such a relative and make the necessary determination may be very time-consuming. One eligibility technician commented, "It is very difficult to get all the information to complete an application." Predictably, this difficulty does not arise in the urban departments where a declaration system is used.²⁹

The superintendent in Department E also indicated that the staff in her department distinguished between "newcomers" and "natives." Further inquiry revealed that one could possibly be a "newcomer" for more than one generation, but we were unable to determine whether classification as a "newcomer" had a per se disqualifying effect or merely

²⁸ Va. Manual § 603.1E.

²⁹ For a description of the declaration system, see 45 C.F.R. § 205.20 (1970), as amended, 35 Fed. Reg. 8366 (1970); Va. Manual § 601.6A. The basic principle here is akin to the income tax form. Statements are taken as true unless there is some reason to disbelieve them. Supporting evidence is required only where there is a question of accuracy or in a random sample of cases for purposes of evaluating the general reliability of the declarations. Under the "standard" or non-declaration system all information must be substantiated. Va. Manual § 601.6B.

made an applicant suspect and therefore subject to a stiffer review of eligibility conditions.³⁰

Both Departments D and E claimed to have an excellent working relationship with their welfare boards (as did Departments A and B). Only in C were there problems. From our interviews, the minutes of board meetings and newspaper accounts it seems that the bone of contention in Department C was whether the local board could set policy that violated state law. For example, the board at various times decided that persons paying off notes on a house trailer would receive no shelter allowance,³¹ that transportation to obtain medical attention would be provided only to recipients whom the superintendent was able to drive,³² and that the caseworker staff position should remain unfilled, even though such a decision meant the failure to supply any mandatory social services.³³ The superintendent, who was not a "local" and holds an M.A. in sociology, consistently opposed these practices. The board eventually removed him from office. Presumably, the board is now looking for someone more in tune with local conditions.

THE VIEW FROM BELOW

It would be misleading and unfair not to recognize that several rural staff members gave correct (*i.e.*, consistent with Virginia Manual of Policy & Procedure) answers to our inquiries about various aspects of the administration of their departments. Yet it is difficult to consider their answers anything more than reactions to hypothetical situations that they somehow do not meet in actual practice. We were told that the staff helps with appeals in a department that, according to state reports, has not had an appeal in more than a year. This department often fails to notify recipients either orally or in writing that they have a right to appeal when benefits are terminated. We were told of possibilities for referral to manpower programs at shops that were defunct and of referrals to rehabilitation officers who somehow were never able to get the recipients into their programs. Staff members purportedly give aid to applicants in filling out forms, "but not when they come in here in a welfare march." But the recipients report that their chances

³⁰ The Supreme Court declared residence requirements invalid in *Shapiro v. Thompson*, 394 U.S. 618 (1968).

³¹ This practice violates Va. Manual § 303.2B.

³² This practice violates 45 C.F.R. §§ 249.10(a)(4), (b)(15)(i) (1970) and Va. Manual § 303.3B(3).

³³ See generally 42 U.S.C. §§ 602(a)(14), (15) (Supp. V 1970); Va. Manual § 103.2.

of getting an application form are very slim unless they approach the office in a group.

This gap between rhetoric and reality and between legal requirements and operations, is by no means confined to the rural departments. It is merely more serious there because the gap often determines the answer to the basic question of assistance or no assistance. In urban departments as well we found that the administrator's view of the system may not coincide with the client's view and that neither necessarily corresponds with the objective evidence available on actual practice or with "the law."

Department A

Interviewers talked with twenty-one AFDC recipients in Department A's jurisdiction, about 10 percent of the caseload, and with eight persons who had been refused benefits or had existing aid terminated. The recipients' or applicants' descriptions of the handling of these cases, along with checks of their eligibility case files, reveal problems that are to be expected from a department that is understaffed and whose caseload is presently growing at the rate of 100 percent annually. The agency is remarkably efficient in handling routine administrative matters such as applications, changes of status and semi-annual reviews. Workers keep accurate and complete records, and standardized administrative practice effectively informs the department's clients of the basis for computing grants, of the availability of special need items and (to a much lesser degree) of the right to appeal agency decisions. The department, however, does not go beyond these functions.

Recipients tend to view the agency as a relatively competent and impersonal bureaucracy. Reports of the helpfulness of caseworkers are mixed and no one could describe specific instances of helpful activity. The recipients' evaluation of whether the office in general was "doing a good job" for them was equally inconclusive, and no one seemed to have any knowledge of the Welfare Board itself. In other words, the practice of this office has characteristics that have been described elsewhere as the result of the caseworkers' "strategy of withdrawal" from involvement with recipients.³⁴ Although this impersonality and lack of individualized treatment has its advantages, there are serious drawbacks as well.³⁵ For example, poor insulation and inefficient means of heating

³⁴ Handler & Hollingsworth, *supra* note 3, at 1176-79.

³⁵ See generally, Handler and Hollingsworth, *The Administration of Social Services*

were costing several of the families that we interviewed gigantic portions of their monthly stipends. These recipients were obtaining general relief funds for food because the department recognized their desperate condition, but surely a special circumstances grant along with aid in arranging for repairs and for the use of more efficient fuels would in the long run produce children who are better cared for as well as financial savings to the public.

Indeed, although a high percentage of recipients are aware of the theoretical availability of special need items, Department A apparently processes only grants for school supplies with any degree of regularity. Over half the recipients reported difficulty in obtaining basic items of furniture (bed, stove, refrigerator). It appears that often requests are forgotten, recipients are directed to the "Bargain Store" which seldom has the required item, items supplied turn out to be worthless, or the local requirement that three appraisals of the cost of the item be supplied is used to deter acquisition or a claim for reimbursement after acquisition. Although this problem may be the result of overtaxed personnel, a less charitable, but equally plausible, explanation is the concern among board members of Department A over the amount of furniture supplied to recipients.

Applicants for assistance to Department A uniformly reported "no trouble" in making application and that the staff was "very helpful" in this regard. Moreover, analysis of case files revealed a very high degree of accuracy in the sometimes complex computation of eligibility factors. There was, however, one "cluster" of exceptions to this finding of accuracy. One half of the rejected applicants interviewed were denied assistance (often two or three times) because welfare personnel improperly computed need and income. Attributions of non-existent or highly irregular income were made in some of these cases. For example, in one case persons in the home but not receiving assistance were presumed to contribute toward the rent, although the caseworker's report stated that these persons made no such contribution.³⁶ In another instance, support payments were included as income although the caseworker again reported that no such payments had been made in six weeks.³⁷ A third case file revealed that welfare personnel had found an applicant ineligible because of five dollars excess earnings, even

and the Structure of Dependency: The Views of AFDC Recipients, 43 Soc. SERV. REV. 406 (1969).

³⁶ This practice contravenes Va. Manual § 303.2C(c) and 45 C.F.R. § 233.20(a)(3)(ii)(c) (1970).

³⁷ This practice violates Va. Manual 602.10D and 45 C.F.R. § 233.20(a)(3)(v) (1970).

though he would have been eligible had a proper allowance been made for the cost of transportation to work.³⁸

These errors are sufficiently inconsistent with the general accuracy of Department A's operation to suggest the need for some explanation beyond simple mistake. Oddly enough, these exceptional applicants have some common characteristics that distinguish them from most of the department's recipients. They might be described as "marginal copers." Their housing is reasonably sound and they possess all basic items of home furnishing; there is some steady income; and their children appear to be well cared for. In short, their situation is difficult but not desperate. If the department feels pressure to keep a tight rein on the burgeoning caseload, this is certainly the logical place to take up the slack. Even here, however, the costs of denying benefits may be great. For example, the most recent application of one of these erroneously rejected applicants was for foster care for her children. She said that they would need the care because she planned to commit suicide.

Department B

Interviewers talked with and reviewed files on nineteen of this department's recipients, which represented nearly 20 percent of its caseload. The accuracy of the department's determinations of eligibility and basic allowances was also very high. We found only isolated instances of possible error in income attribution or determination of the assistance unit. Recipients generally expressed a high regard for the department, although they could not relate specific instances in which the staff's help went beyond assistance in applying. Only one person reported any difficulty in making an application.

A major difference between the recipients in the respective jurisdictions of Departments A and B is that those in B's jurisdiction lacked the general knowledge of the operation of the welfare system that recipients in A's jurisdiction possessed. Virtually no one who received aid from Department B knew (1) what was considered in computing his grant, (2) that he could obtain special circumstances items in addition to the regular grant or (3) that he had a right to appeal adverse deci-

³⁸ Va. Manual § 602.10A(2)(c). The finding of ineligibility is no small matter. Once the applicant had been determined to be eligible, one third of his income would have been excluded in computing the need of the assistance unit, and the family would have been eligible for medicaid. Earning \$5.00 too much can be very expensive under the present welfare system.

sions. Despite the implications of this last finding to the contrary, the department did not fail to send out the standard state change-of-status form, which includes the right to appeal notification in the boilerplate. Nor did it fail to provide notice of appeal rights at the time of application. These notifications, in this department as in all others, are simply not effective.

The finding that recipients are ignorant of the availability of special need grants is relatively serious, because without access to these grants every minor loss or injury to property (or indeed, change of season) may be catastrophic. These recipients, who do not know what the basic grant is meant to cover and who are extremely grateful for even that grant, will never "bother" the department by asking for additional help. Although caseworkers report that they consider it a part of their responsibility to observe whether there are special grant needs when visiting recipients, this is not an appropriate substitute for informing the client. Maintenance of this magical quality about the computation of the basic grant can only increase the recipient's dependence on the department and the good will of its personnel.

Although the staff of Department B talks about individualized service to its clients, and the recipients agree that the staff is generally concerned with their welfare, we found no real evidence of the provision of useful casework services. Indeed, as in the case of Department A, a number of recipients would greatly benefit from minimal services, such as advice on fuel efficiency and special grants to permit the change-over from wood to coal.

Department C

Most of the thirteen recipients (and one rejected applicant) interviewed in County C thought that the welfare staff was "O.K.," but that the local board was out to purge the rolls. All the evidence supports their assessment of the situation. The recipients in Department C were more enlightened on the "politics" of welfare than on the administration of the system. They understood their rights under the system only slightly better than did the recipients in County B, and what knowledge they did have probably resulted from their participation in the local chapter of the National Welfare Rights Organization. Recipients in this county consistently complained of the lack of transportation to medical facilities (which the board has refused to provide) and did not seem to know what a caseworker visit was.

There is apparently no difficulty in applying for aid in County C.

However, eligibility problems arise in this county because of board refusals to approve grants for eligible applicants or board insistence on closing cases or reducing grants for improper reasons—for example, because the recipient has an automobile or is using his shelter allowance to purchase a mobile home. Review of case files revealed a high percentage of possible errors in computing grants, but nearly one third of these errors favored the recipient.

Department D

In County D we interviewed eight of the eleven AFDC cases. Their views of the welfare department were consistent: The department is racist (“They just don’t care about colored people.”), and it will keep a person off welfare or from even applying unless that person knows his rights before-hand (from NWRO) and goes to the office with a group. Lone inquirers are told that the staff is “too busy” (there are a total of 52 cases handled by this office including OAA and APTD) or to “get a job.” Because of their welfare rights group these recipients know about special grants (but they are hard to get) and of their right to appeal. But this knowledge is hardly sufficient to meet the department on its home ground. The files of half of the recipients suggest that they are receiving less on their basic grant than they are entitled to receive because of improper attribution of income and the failure to include all eligible individuals in the family budget unit. The staff has denied specific requests for reimbursement of travel expense for medical care, and no social services are provided except the caseworker’s regular visits to “sit around and talk” or to deliver sermons on the necessity of work and sexual abstinence.

The two rejected applicants whom we interviewed had between them applied eight times for welfare aid. One claimed to have been rejected five times with no reason given. The other had allegedly suffered three rejections for two different reasons—neither of which should have had any bearing on eligibility.

Department E

The interposition of local standards between the applicant and his statutory entitlement is virtually absolute in Department E. Our interviewers saw six AFDC recipients and stumbled upon nine rejected or terminated families. In all fifteen cases there were major irregularities, and in most instances there were several such errors. This conclusion

and the discussion that follows assumes the truthfulness and accurate recollection of the persons interviewed in these cases. The superintendent of Department E would not allow even the recipients or applicants to view their own eligibility files without a directive to do so from the State Department of Welfare and Institutions. Our appeals to that department fell on deaf ears. Consequently, the personal interview, including documentary evidence in the possession of the persons interviewed, is our sole source of information.

Discouragement of applications in Department E takes a variety of forms: oral declarations of ineligibility ("before I can get in the door"), instructions "to come back some other time," statements that there is "no money," and "requests" that applications be withdrawn. The department visited one applicant at home three times to "request" withdrawal until, feeling threatened, she did so.³⁹ A person completing a formal application may never receive a response from the department.⁴⁰ Moreover, in five of the nine cases reviewed, notices of denial or termination of assistance contained no explanation of the grounds for such termination or denial,⁴¹ and in the remainder of the cases the reasons given were improper. All termination decisions, including those based solely on questions of fact, were made without prior hearing,⁴² and in five of the termination notices we examined, the state form was not used and no other notice of appeal rights was given.

Department E not only frowns on illegitimacy, its beliefs color the action it takes. This department excludes all illegitimates from AFDC. If both legitimate and illegitimate children live in one family unit, the legitimate children may receive assistance while the illegitimates are barred. Even if this practice did not violate state⁴³ and federal statutes⁴⁴ and regulations, it is almost certainly unconstitutional.⁴⁵

It is hardly necessary to add that recipients in this county have no idea how their budget is determined and have never heard of special circumstance grants. The situation of one recipient reveals the serious-

³⁹ This is a violation of the provisions cited *supra* note 25.

⁴⁰ We found four cases of such inaction. This is a violation, *inter alia*, of VA. CODE ANN. § 63.1-114 (1968).

⁴¹ Such denial or termination without grounds violates the provisions cited *supra* note 26.

⁴² A hearing is required by *Goldberg v. Kelly*, 397 U.S. 254 (1970), and Va. Bulletin 513.

⁴³ Va. Manual § 204.9C(2)(b).

⁴⁴ *King v. Smith*, 392 U.S. 309, 320 (1968).

⁴⁵ See *Levy v. Louisiana*, 391 U.S. 68 (1968). *But cf.* *Labine v. Vincent*, 401 U.S. 532 (1971).

ness of this latter failing. The caseworker visits the recipient every week to see if her husband has come home. Yet she has never been informed that the department could supply money to replace all the second story window panes, which have been broken out by vandals and without which heating is virtually impossible.

There remains the matter of medical care. The fact that qualification for AFDC is necessarily qualification for medicaid⁴⁶ suggests that all welfare recipients also get medical treatment. This, however, is not the case in County E where some recipients have never heard of medicaid. Even a direct request for help with medical bills does not necessarily spur the staff to furnish information on such medical care. Medical transportation is not provided and recipients are erroneously told that they cannot get glasses on medicaid.⁴⁷

An enumeration of further irregularities is possible, but hardly necessary. There are people in County E near starvation because of the illegal operation of that county's welfare department. Were it not for an OEO emergency food program they might have starved already. One of the study group suggested the following lines from Robert Graves:

She is no liar, yet she will wash away
Honey from her lips, blood from her shadowy hand
and, dressed at dawn in clean white robes will say,
Trusting the ignorant world to understand:
"Such things no longer are; this is today."

WHY

This examination of welfare administration in Virginia raises two levels of "why" questions: (1) Why do the local departments in rural areas engage in willful violations of public welfare law? (2) Why do the state and federal governments who pay most of the money and purportedly make most of the rules permit this improper administration to continue?

The rural administrator has a ready answer to the first question: The welfare laws are too "permissive" for local conditions. Who is to say that he is wrong? Compared with their urban neighbors most people in the rural counties we surveyed are very poor. The evidence reveals that there are few jobs and the available work is hard. "Things" are probably not going to get much better. Perseverance under such cir-

⁴⁶ Va. Manual § 502.1.

⁴⁷ *Id.* § 505.1.

cumstances requires, not just for some, but for most, a strong will and no small courage. This courage often comes from fundamentalist religious belief and is reinforced by the social pressure of a community of like minds. In this context the ability of some to live without work and at public expense is enormously threatening. When these beneficiaries also sometimes violate the indigenous moral code with respect to sexual conduct and "demon rum," a code that binds the majority so tightly even in the breach, public support of them becomes an outrage.

It is perhaps easy to brush aside as outdated these notions that public support should depend upon moral uprightness. But what if an administrator and his general constituency really do "know these people," not as a class, but as persons, and they are genuinely offended by them? What if the tax base is so small that it is possible virtually to isolate each person's percentage contribution to the yearly revenues, and the single largest public expenditure is for welfare? Of course, it is proper to say that the rural welfare administrators and their constituencies are wrong, and that the law as formulated by the general public, the broader constituency, must be obeyed. But is it realistic to expect them to behave differently?

The results of this study suggest that it is not, unless the local administrator realizes that the expectations of the general public must be carried out. Presumably one of these expectations is that each state will have in substance a single system of Aid to Families with Dependent Children—not two, or five, or one hundred twenty-five. The first requirement for state plans in Title IV of the Social Security Act is that they "be in effect in all political subdivisions in the State, and, if administered by them, be mandatory upon them."⁴⁸ Such a conception of welfare administration is implicit in the power of the Virginia Board of Welfare and Institutions to take over local systems that administer programs in violation of state law.⁴⁹ Yet systematic non-conformity with basic legal requirements goes uncorrected and apparently undetected.

Why does overhead control fail? Simply put, it fails because it has been allowed to fail. But that is a tale for another day. That problem involves the politics of welfare administration as it is played out in state welfare departments and state legislatures, in HEW and in the Congress. It is enough here to say that the object of the federal and

⁴⁸ 42 U.S.C. § 602(a)(1) (Supp. V 1970).

⁴⁹ VA. CODE ANN. § 63.1-123 (1968).

state grant systems has never been control, but influence.⁵⁰ The influence has been felt but control is still in "the doing." So long as some of those who have the "doing in charge" are philosophically opposed to a system of public assistance based on statutory rights and individual dignity there will be no unified system of welfare in Virginia.

Nor is the state department's current plan of "decentralizing" its control by the establishment of regional offices likely to be much more effective in the supervision of local departments. Although the state department is now sometimes hampered by lack of information concerning irregularities, it has shown no real inclination to use its statutory authority to insure conformity when it does acquire information indicating a local pattern of illegal conduct. This attitude is not likely to change merely because certain officials are housed in regional offices.

In this context any reform proposal that would effectively unify the administration of public assistance at either the state or federal level deserves close attention, however objectionable other aspects of the plan might be. If national reform efforts do not result in "federalization," Virginia presently faces an opportunity to develop a uniform and equitable system of public welfare. The opportunity arises from the charge of the 1970 General Assembly to the State Department of Welfare and Institutions to produce a plan for the State to assume the administration and funding for all categorical public assistance programs.⁵¹ Hopefully, the Commonwealth of Virginia will not neglect this opportunity.

⁵⁰ Two instructive discussions are M. DERTHICK, *supra* note 5, and G. STIENER, *SOCIAL INSECURITY: THE POLITICS OF WELFARE* (1966).

⁵¹ VA. CODE ANN. § 63.1-92 (Supp. 1970).