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Nonfinancial Eligibility and Eviction Standards in Public Housing the Problem Family in the Great Society

Brian F. Toohey

NONFINANCIAL ELIGIBILITY AND EVICTION STANDARDS IN PUBLIC HOUSING—THE PROBLEM FAMILY IN THE GREAT SOCIETY

Improvement of housing for low-income families has been a federal objective since 1937.[1] A dozen years later Congress declared its intent to realize "as soon as feasible . . . the goal of a decent home and a suitable living environment for every American family . . . ."[2] But many American families today have neither. The Report of The President's National Commission on Civil Disorders, in recommending the construction of 600,000 publicly assisted units in 1968 and 6,000,000 units within five years,[3] merely emphasized the obvious: past efforts at public housing have fallen short of initial expectations. There are, however, more than 2,000,000 people presently living in low-rent public housing.[4] For slum dwellers seeking admittance to public housing, and for present government tenants, the procedural and substantive standards governing their admission or continued tenancy spell the difference between decent shelter and total frustration.[5]

Eligibility and eviction standards are determined by the local housing authority.[6] The only federal eligibility requirements are that

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1 Housing Act of 1937, 42 U.S.C. § 1401 (1964).

2 Housing Act of 1949, 63 Stat. 413, 42 U.S.C. § 1441 (1964).

3 NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS, REPORT 475 (Bantam ed. 1967). This goal, too, appears overambitious. The probability of the Commission's recommendations gaining either presidential or congressional acceptance is minimal unless the Vietnam War ends. Even then there is little likelihood that the goal could be reached. "It seems impossible—based on past performance—to build any part of 600,000 new publicly assisted units this coming year; and only a fraction of 6,000,000 are possible in five years." Lowe, *What White America Must Do*, SATURDAY REV., Mar. 16, 1968, at 26.

4 Friedman, *Government and Slum Housing: Some General Considerations*, 32 LAW & CONTEMP. PROB. 357, 361 (1967). New York, Connecticut, Massachusetts and New York City sponsor additional nonfederally assisted low-rent public housing programs. Rosen, *Tenants' Rights in Public Housing*, in HOUSING FOR THE POOR: RIGHTS AND REMEDIES 154 (N.Y.U. School of Law Project on Social Welfare, Supp. 1, 1967).

5 The rent's $70 a month and the whole building's crawling with roaches and rats. The plaster is falling down. It ain't fit for dogs. But what can you do? My wife's always trying to get into one of those projects, but they won't let us in until I get a steady job. So we're always finding ourselves right where we started—nowhere.

Parks, *The Cycle of Despair*, LIFE, Mar. 8, 1968, at 47, 50 (from an interview by Gordon Parks with Norman Fontanelle, Sr., of Harlem).

6 The express policy of Congress is "to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program . . . ." Housing Act of 1959, § 501, 73 Stat. 680, 42 U.S.C. § 1401 (1964). The same policy is followed in New York. N.Y. PUB. HOUSING LAW § 37(1)(w) (McKinney 1955).

the tenants constitute a "family" and that the applicant's income be less than an approved maximum limit.[7] Similarly, over-income is the sole ground for termination under federal law.[8] However, local authorities have not restricted themselves to these areas in determining admission and eviction criteria; instead they have formulated unrealistic policies which appear to contradict the goals of public housing. For example, many states deny public housing to families with illegitimate children,[9] despite congressional intent to aid *every* American family, and despite the fact that nearly one-quarter of current Negro births are illegitimate.[10]

Such irrational classifications breed lawsuits, but there are threshold procedural problems. Can the determination be appealed? Is there standing to sue? Recent developments indicate that at least minimum due process will be afforded those aggrieved by the local authority. The safeguards of notice and opportunity to be heard, however, do not reach the more basic issue of whether the substantive standards adopted by the local authority are just. Such a determination can be made only after examining present "desirability" standards, the unique circumstances of the problem family, and the proper role of public housing.

I.

Eligibility and Eviction Procedures—Securing Due Process

Professor Reich, commenting on the wide discretion afforded local housing authorities in deciding on the admission of tenants, found existing standards generally vague, with no clearly established methods of proof.[11] Moreover, he found "little in the way of procedure to make certain that the authorities' information is true."[12] Although published standards may be vague, more detailed standards certainly exist. Local authorities must adopt some criteria for choosing a limited number of acceptances from an enormous number of applicants. Although the

7 42 U.S.C. § 1402 (1964). "Federal law makes relatively few demands on administration, insisting only that only poor persons be allowed in public housing." Friedman, *Public Housing and the Poor: An Overview*, 54 Calif. L. Rev. 642, 656 (1966).

8 42 U.S.C. § 1410(g)(3) (1964).

9 *See, e.g.*, Thomas v. Housing Auth., 35 U.S.L.W. 2722 (E.D. Ark. May 26, 1967); Williams v. Housing Auth., 223 Ga. 407, 155 S.E.2d 923 (1967).

10 L. Rainwater & W. Yancey, The Moynihan Report and the Politics of Controversy 5 (1967).

11 Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 Yale L.J. 1245, 1250 (1965).

12 *Id.*

federal statute[13] and the federal contributions contract[14] require promulgation and publication of admission policies, "[l]ack of enforcement of the obligation . . . has resulted in a widespread pattern of secret standards."[15] A recent study of the procedures of the New York City Housing Authority suggests that the only way to overcome the compounded lack of evidentiary standards, notice, and opportunity to rebut in the admissions process is by a suit in mandamus, or its equivalent, on due process and equal protection grounds.[16] This solution is neither practical nor readily available for the average slum resident.

Eviction procedures are only slightly less secret and arbitrary. Although judicial review of evictions in more common than review of rejections, the courts have generally upheld the eviction for any reason so long as the local authority followed the eviction procedures established in the lease.[17] Two cases demonstrate the refusal of the courts to adjust the traditional landlord-tenant matrix to the goals of public

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13 42 U.S.C. § 1401(g)(2) (1964).

14 Public Housing Admin., Consolidated Annual Contribution Contract, Part I, § 12(A)(1)(206) (PHA-3010, April 1966). This is the basic document providing federal funds for the local authorities.

15 Rosen, *supra* note 4, at 166.

16 *Id.* at 167-81. *See* Manigo v. New York City Housing Auth., 51 Misc. 2d 829, 273 N.Y.S.2d 1003 (Sup. Ct. 1966), *aff'd mem.*, 27 App. Div. 2d 803, 279 N.Y.S.2d 1014 (1st Dep't), *cert. denied*, 389 U.S. 1008 (1967). The lower court published the standards used to find Mrs. Manigo ineligible on grounds of undesirability. A tenant or applicant is undesirable if his family constitutes:

> (1) a detriment to the health, safety or morals of its neighbors or the community, (2) an adverse influence upon sound family and community life, (3) a source of danger to the peaceful occupation of the other tenants, (4) a source of danger or cause of damage to the premises or property of the Authority, or (5) a nuisance. In making such determination consideration shall be given to the family composition, parental control over children, family stability, medical and other past history, reputation, conduct and behavior, criminal record, if any, occupation of wage earners, and any other data or information with respect to the family that has a bearing upon its *desirability*, including its conduct or behavior while residing in a project.

Id. at 831, 273 N.Y.S.2d at 1004 (emphasis added). The detailed standards which implement these general considerations are discussed *infra* at pp. 1129-31.

17 The standard operating procedure for public housing evictions is a one-month notice requirement in the lease. "The landlord or the tenant may each terminate this lease and tenancy at the end of any monthly term by giving to the other one calendar month's prior notice in writing." N.Y. City Housing Auth., Resident Monthly Lease Agreement (NYCHA Form 040.001, rev. May, 1959). "This lease may be terminated by the Tenant at any time by giving 15 days written notice. The notice must be in writing and delivered to the management office. This lease may also be terminated by the Management at any time by the giving of written notice not less than 30 days prior to termination. *No reason need be stated for such termination* . . . ." Housing and Redev. Auth. in and for the City of Minneapolis Dwelling Lease, *reprinted in* NATIONAL ASSOC. OF HOUSING & REDEV. OFFICIALS, PUBLIC HOUSING IS THE TENANTS A-59 to A-60 (1967) [hereinafter cited as PUBLIC HOUSING IS THE TENANTS].

housing. In *Brand v. Chicago Housing Authority*,[18] the defendant sought to reduce income maximums and to evict plaintiff-tenant on grounds of over-income. Dismissal of the plaintiff's complaint was affirmed on the ground that "[a]ny property right acquired by the plaintiffs was circumscribed by the terms and conditions upon which [the lease] was founded."[19] The housing authority in *Walton v. City of Phoenix*[20] brought an action of forcible entry and detainer against "undesirable" tenants. In affirming a decision for the authority, the Arizona Supreme Court equated it with a private landlord, implying the power to "impose reasonable restrictions on the use of the privilege so granted . . . ."[21] There has been one area, however, where the courts have not hesitated to look beyond the terms of the lease to determine if due process and equal protection were being denied. Under the terms of the now-expired Gwinn Amendment,[22] any member of an organization listed as subversive by the Attorney General was barred from public housing. Under the amendment's case law, housing authorities are treated not as private landlords, but rather as public bodies subject to due process and equal protection requirements.[23] Another limitation on housing authority actions appears in the Gwinn Amendment cases; although there is no constitutional right of tenancy, no unconstitutional requirement can be made a condition of continued occupancy.[24] Although these cases received notice,[25] courts have repeatedly refused to analogize from them, upholding instead the "right" of the authorities under lease provisions to terminate without giving a reason.[26]

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18 120 F.2d 786 (7th Cir. 1941).

19 *Id.* at 788.

20 69 Ariz. 26, 208 P.2d 309 (1949).

21 *Id.* at 31, 208 P.2d at 311-12; *accord*, Chicago Housing Auth. v. Ivory, 341 Ill. App. 282, 93 N.E.2d 386 (1950).

22 Act of July 31, 1953, ch. 302, 67 Stat. 307.

23 Actions not consistent with due process and equal protection were held beyond the power of the local authority. Housing Authority v. Cordova, 130 Cal. App. 2d 883, 279 P.2d 215 (Super. Ct. 1955), *cert. denied*, 350 U.S. 969 (1956). *See also* Rudder v. United States, 226 F.2d 51 (D.C. Cir. 1955); Kutcher v. Housing Auth., 20 N.J. 181, 119 A.2d 1 (1955).

24 Chicago Housing Auth. v. Blackman, 4 Ill. 2d 319, 122 N.E.2d 522 (1954). *See also* Lawson v. Housing Auth., 270 Wis. 269, 70 N.W.2d 605, *cert. denied*, 350 U.S. 882 (1955).

25 *See* Williams, *Tenant's Loyalty Oaths*, 31 NOTRE DAME LAW. 190 (1956); Note, *The Gwinn Amendment: Practical and Constitutional Problems in Its Enforcement*, 104 U. PA. L. REV. 694 (1956).

26 Pittsburgh Housing Auth. v. Turner, 201 Pa. Super. 62, 191 A.2d 869 (1963). In New York City Housing Auth. v. Russ, 1 Misc. 2d 170, 134 N.Y.S.2d 812 (Sup. Ct. 1954) the court held that it was "unnecessary for the landlord to offer any testimony as to the objectionable behavior of the tenant to make out a prima facie case. . . . When the landlord Authority terminated the lease in accordance with the authority vested in it by

The power to evict without offering any competent evidence of undesirability was upheld in *New York City Housing Authority v. Watson*,[27] although respondents won a strong dissent.[28] Eviction procedures have remained essentially immune to effective judicial review. Similarly, administrative remedies are limited. In a case involving an injunction against eviction and mandamus for a hearing, a New York court held that there is no right to a hearing; and where one is gratuitously made available, its use in every case may not be required.[29] Where formal eviction procedures, including a hearing, have been established, their operative character is not likely to resemble familiar administrative due process.[30]

Recent developments, however, indicate a trend toward correcting such administrative failings. In early 1967 the Department of Housing and Urban Development issued a circular intended to combat growing dissatisfaction with eviction practices and requiring notice and opportunity to be heard, enumeration of charges, and maintenance of full records.[31] Aside from dubious enforceability, the value of the circular

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the laws of this State, the trial court had no authority to refuse to issue the final order in favor of the landlord." *Id.* at 171, 134 N.Y.S.2d at 813.

27 27 Misc. 2d 618, 207 N.Y.S. 2d 920 (Sup. Ct. 1960).

28 *Id.* at 623, 207 N.Y.S.2d at 926.

29 Smalls v. White Plains Housing Auth., 34 Misc. 2d 949, 230 N.Y.S.2d 106 (Sup. Ct. 1962). "The court should only interfere when the determination made was one that no reasonable mind could reach." *Id.* at 952, 230 N.Y.S.2d at 109.

30 For an examination of the weaknesses of the New York City Housing Authority's Tenant Review Board procedures, see Rosen, *supra* note 4, at 217-23. The Board defines undesirability as conduct or behavior constituting: (*1*) a detriment to the health, safety or morals of the neighborhood or community; (*2*) an adverse influence upon sound family and community life; (*3*) a source of danger or cause of damage to the premises or property of the Authority; (*4*) a source of danger to the peaceful occupation of the other tenants; (*5*) a nuisance. *Id.* at 219. *See also* note 16 *supra*.

31 The circular states, in part:

> Since this is a federally assisted program, we believe it is essential that no tenant be given notice to vacate without being told by the local authority, in a private conference or other appropriate manner, the reasons for the eviction, and given an opportunity to make such reply or explanation as he may wish.
>
> In addition to informing the tenant of the reason(s) for any proposed eviction action, from this date each Local Authority shall maintain a written record of every eviction from the federally assisted public housing. Such records are to be available for review from time to time by HUD representatives and shall contain the following information:
>
> 1. Name of tenant and identification of unit occupied.
> 2. Date of notice to vacate.
> 3. Specific reason(s) for notice to vacate. For example, if a tenant is being evicted because of undesirable actions, the record should detail the actions which resulted in the determination that eviction should be instituted.
> 4. Date and method of notifying tenant with summary of any conferences with tenant, including names of conference participants.
> 5. Date and description of final action taken.

Department of Housing and Urban Development, Circular, Feb. 7, 1967.

is impaired because of the vagueness of its language. It yields no clear-cut standards for determining valid reasons for eviction or for determining what shall constitute an appropriate hearing.[32]

Although the Department has rule-making power under the housing acts,[33] a precatory statement that it "believe[s] it is essential" may signal a non-binding request that the broad discretion of the local authority be more fairly exercised. In *Thorpe v. Housing Authority of Durham*,[34] the United States Supreme Court vacated a judgment of the Supreme Court of North Carolina as a result of the circular, remanding for further consideration below. The Court deferred judgment as to "[t]he legal effect of the circular, the extent to which it binds local housing authorities, and whether it is in fact applicable to the petitioner . . . ."[35] On remand, the Supreme Court of North Carolina affirmed its prior decision, holding only that the circular was not retroactive.[36] Thus, both courts avoided passing on the legal efficacy of the circular. The question will not remain unanswered since certiorari has again been granted in *Thorpe*, and other cases also are testing the circular's effect.[37] Moreover, if local authorities choose to ignore the circular, it is likely that its provisions would be added to the annual contributions contract, which is binding on the local authorities.

The eventual form of the hearing will probably be determined only by a process of trial and error at the local level. The growing litigiousness of the poor—fostered by the swelling ranks of poor-people's lawyers—should encourage at least minimum due process in the immediate future.

Although significant problems remain, there has been a major change of official attitude which will undoubtedly produce wider tenant rights. Gaining procedural due process, however, will be a hollow victory for the publicly-housed poor unless rational and meaningful substantive standards are formulated.

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32 11 WELFARE LAW BULL. 5 (Jan. 1968).

33 42 U.S.C. § 1408 (1964).

34 386 U.S. 670 (1967).

35 386 U.S. at 673 n.4. The petitioner claimed that she was being evicted for political activity. Her request for a hearing was denied, and notice of the reason for eviction was not given. See Justice Douglas' concurring opinion for a full statement of the facts, 386 U.S. at 674-77.

36 271 N.C. 468, 157 S.E.2d 147 (1967) *cert. granted*, 36 U.S.L.W. 3345 (May 28, 1968).

37 11 WELFARE LAW BULL. 5 (Jan. 1968). At least one court has apparently already determined the binding quality of the circular. *See* Williams v. Housing Auth., 223 Ga. 407, 155 S.E.2d 923 (1967). A recent New York case requires *state* housing authorities to give "a reasonable ground for termination" despite a contrary lease provision. Vinson v. Greenburgh Housing Auth., 36 U.S.L.W. 2651, 2652 (App. Div. 2d Dep't March 11, 1968).

II

SUBSTANTIVE ELIGIBILITY AND EVICTION STANDARDS

A. *Present Standards—"Desirability" As the Test for Shelter*

Although the original clientele of public housing was "poor but honest workers," today's residents are more likely to be paupers.[38] This shift has led local authorities to adopt screening procedures establishing preference categories whereby only a few tenants can be accepted from many applicants. Medical, occupational, and behavioral histories are regularly used to determine eligibility.[39] Similarly, eviction standards, formal or informal, are patterned on "nondesirability" lines. Illegitimacy,[40] narcotics addiction,[41] arrest of a family member,[42] and misconduct of children[43] are typical determinants of nondesirability.

It can be argued that nondesirability should play no part in tenant selection or eviction. A New York municipal court judge has said, "It is not for the landlord to commend, condone or condemn a tenant's actions or to sit in public judgment upon his morals."[44] On the other hand, the authority cannot be expected to submit its other tenants or its property to obvious danger through a first-come-first-served policy, or through standing by idly in the face of gross abuse of its facilities. A second possible objection to desirability standards, at least as applied

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38 *See* Friedman, *supra* note 7, at 648-49.

39 The New York City Housing Authority uses three categories "to create for its tenants an environment conducive to healthful living, family stability, sound family and community relations and proper upbringing of children."

> A. Where in the course of processing an application, information pertaining to the composition of the family and to its conduct and behavior indicates that it will conform with the Authority's objective, the family shall be declared eligible for admission.
>
> B. Where the information reveals behavior which represents a "Clear and Present Danger" to other tenants, the family shall be declared ineligible.
>
> C. Where the information reveals behavior which does not represent a "Clear and Present Danger" but which includes indications of potential problems, the family shall be considered eligible; however, further evaluation of each family shall be made before a final decision as to eligibility is reached.

N.Y. City Housing Auth., Management Directive GM-1287 (Nov. 29, 1961) [hereinafter cited as GM-1287]. The directive sets forth more detailed standards for applying the categories. *See* pp. 1129-34 *infra*.

40 *See* Williams v. Housing Auth., 223 Ga. 407, 155 S.E.2d 923 (1967).

41 *See In re* Sanders v. Cruise, 10 Misc. 2d 533, 173 N.Y.S.2d 871 (Sup. Ct. 1958).

42 *See* New York City Housing Auth. v. Watson, 27 Misc. 2d 618, 207 N.Y.S.2d 920 (Sup. Ct. 1960).

43 *See* Smalls v. White Plains Housing Auth., 34 Misc. 2d 949, 230 N.Y.S.2d 106 (Sup. Ct. 1962).

44 New York City Housing Auth. v. Kelsey (unreported case in the N.Y. City Mun. Ct. May 1, 1954). For a discussion of the case see 11 J. HOUSING 278 (1954).

to the federal program, is that the fact of variance from state to state violates equal protection guarantees. But because public housing cannot serve every potentially eligible person, there must be some selection. This does not mean that eligibility and eviction standards are beyond the scope of equal protection. There must be a fair chance to participate for all those eligible, and the techniques used must be consistent with congressional intent and agency regulations.[45] The "fairness" of local standards must be judged in light of the broad purpose of the acts —housing the poor.

Desirability standards can be justified only if reasonably related to sheltering the poor; but by their very nature, such standards ignore the question of housing need. The desperation of slum life is often reflected in the types of antisocial activity specifically categorized as earmarks of nondesirability. Thus, those families who are probably in the greatest need of shelter are the least desirable. For example, substandard housing is an important causal element in family instability.[46] Yet, the instability of the family unit is expressly made a condition indicative of potential problems by the New York City Housing Authority.[47] Similarly, although a slum resident has little initiative, money or talent for repairing his slum home, "grossly unacceptable housekeeping" constitutes a "clear and present danger" under the same set of standards.[48] Likewise, overcrowding can lead to repeated friction with neighbors, another of the "clear and present danger" standards.[49]

Membership in a violent teenage gang,[50] highly irregnlar work history,[51] apparent mental retardation of *any member of the family*,[52] and poor housekeeping standards including lack of furniture,[53] are treated as indicative of "potential problems" by the New York authority.

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45 *See* Harvith, *Federal Equal Protection and Welfare Assistance*, 31 ALBANY L. REV. 210 (1967). "A construction of section 27 which would enable the housing authority to prescribe conditions of eligibility having no rational connection with the purpose of the act would raise serious constitutional questions." Chicago Housing Auth. v. Blackman, 4 Ill. 2d 319, 326, 122 N.E.2d 522, 526 (1954).

46 Foster & Freed, *Unequal Protection: Poverty & Family Law*, 42 IND. L.J. 192, 196 (1967).

47 GM-1287, *supra* note 39, at 4.

48 "Applicants who in their present or past housing have created a fire hazard, have damaged the premises and the equipment or have adversely affected neighbors by causing infestation or foul odors, are to be considered a 'Clear and Present Danger.'" *Id.* at 3.

49 *Id.* at 3.

50 *Id.*

51 *Id.* at 6.

52 *Id.*

53 *Id.*

Involvement in illegal activities within five years of application for admission is considered a "clear and present danger."[54] Under this standard, the husband and three children of a twenty-two year old woman who, at age seventeen, was arrested but never convicted of prostitution, could be denied admission on this ground alone. Evidence of reformation or of the circumstances surrounding the arrest would be irrelevant. The same result could be reached where a family member was arrested for looting during a riot. If viewed as "evidence that an individual is prone to violence," the applicant would be denied admission as a "clear and present danger."[55] Even if the authority viewed the act as merely "evidence of antisocial behavior," the applicant would be categorized a "potential problem."[56] In *Manigo v. New York City Housing Authority*[57] the criminal record of the applicant's husband was held sufficient grounds to deny admission, although his only conviction was for disorderly conduct. Prior adjudications of juvenile delinquent and youthful offender status were viewed by the court as indicative of a continuous basic pattern of misbehavior sufficient to deny admission.[58] The decision can be viewed as amending the authority's standards so that single or even scattered arrests or convictions, not really indicative of a continuing pattern of misconduct, are no longer a sufficient basis for denial of admission. As applied to evictions, the reasonableness of a rule against illegal actions by a family member is questionable. In *New York City Housing Authority v. Watson*,[59] the father of the tenant family was convicted of a crime and imprisoned. The family was served with notice of eviction, but the trial court denied the authority's petition for possession.[60] The appellate court reversed, holding that undesirability was not an issue for the court.[61] A strident dissenter attacked the complete irrationality of the policy, terming the action of the housing authority "arbitrary" and "injust."[62] He found a

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54 Where a member of the family was engaged in or was convicted for prostitution, sale of narcotics, professional gambling or manufacture or sale of illegal articles such as zip guns, the family is to be considered a "Clear and Present Danger," provided that the involvement in such activities or the conviction occurred within the past five years.

Id. at 2.

55 *Id.*

56 *Id.* at 4.

57 51 Misc. 2d 829, 273 N.Y.S.2d 1003 (Sup. Ct. 1966), *aff'd mem.*, 27 App. Div. 2d 803, 279 N.Y.S.2d 1014 (1st Dep't), *cert. denied*, 389 U.S. 1008 (1967).

58 *See* 3 WELFARE LAW BULL. 4 (Apr. 1966); 5 WELFARE LAW BULL. 7 (Oct. 1966).

59 27 Misc. 2d 618, 207 N.Y.S.2d 920 (Sup. Ct. 1960).

60 23 Misc. 2d 408, 189 N.Y.S.2d 274 (N.Y. City Mun. Ct. 1959).

61 27 Misc. 2d at 618, 207 N.Y.S.2d at 920.

62 *Id.* at 622, 207 N.Y.S.2d at 924.

violation of the statutory purpose of the authority since "[a]n act intended to provide housing for the poor is misused when a family is driven from its home for no better reason than that it had been sorely afflicted. Neither reason nor principle requires us to make a mockery of the law."[63] The case raises an interesting problem. If the husband had been sentenced to ninety-nine years imprisonment, could eviction be rationalized on any grounds? The husband could not disrupt the neighborhood, and his family could not constitutionally be adjudged guilty by association. This reluctance of the local authorities to place reason over unblinking obedience to procedure is further demonstrated by the action of the local unit in *In re Sanders v. Cruise*.[64] After the tenants' adult son, a nonresident of the project, was adjudged a narcotics addict, the authority issued an eviction order. The court measured the fact of drug addiction against the five grounds for eviction for nondesirability and concluded that the authority's action "exceeds any *reasonable* requirement for the peaceful occupancy of the project and for the preservation of property."[65] Thus, the reasonableness test has been effectively applied in at least one New York case.

Perhaps the most patently arbitrary standard now in use is the bar against families with illegitimate children.[66] At present, there is a conflict among the district courts concerning the standard's constitutionality with numerous suits pressing the matter.[67] The case most likely to be followed, because of its thoughtful analysis of the problem, is *Thomas v. Housing Authority of Little Rock*.[68] Two unwed mothers challenged the local exclusion policy in a class action. Finding only minimal eligibility requirements in the federal statutory and contractual provisions, the court examined the policy in relation to the state statutes, the goals of the low-rent housing program, and the proper operation of the project. Although the "unwed mother policy doubtless had the elimination of sexual misconduct as its object," the court rejected the policy because of its inflexibility and violation of the aims of public housing.[69]

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63 *Id.* at 623, 207 N.Y.S.2d at 926.

64 10 Misc. 2d 533, 173 N.Y.S.2d 871 (Sup. Ct. 1958).

65 *Id.* at 537, 173 N.Y.S.2d at 875 (emphasis added).

66 For an excellent discussion of the illegitimacy standard, see Rosen, *supra* note 4, at 227-42.

67 *Id.*

68 35 U.S.L.W. 2722 (E.D. Ark., May 26, 1967).

69 The fatal vices are its inflexibility and general disharmony with the spirit and aim of the low-rent housing program. . . . It overlooks the possibility of reform and of benefits that may be derived from better surroundings. Automatic exclusion is drastic beyond any reasonable necessity in the context in which it was promulgated.

Another case, however, upholds eviction for failure to comply with a lease provision requiring birth reports.[70] Reasonable criticism of such a result can be made on several grounds. Illegitimacy does not affect the decency, safety or sanitary nature of the accommodations—Congress' concern; the housing authority has no proper concern with the private lives of its tenants, especially their sexual behavior. Also, such a policy ignores the fact that one quarter of Negro births are illegitimate.[71] Finally, any implication that additional discipline problems arise in one-parent families overlooks the fact that one-third of public housing families are presently one-parent families.[72] The policy is also undercut by the strong possibility that such families have no harmful effect upon a neighborhood except in the case of overcrowded, substandard housing.[73] It makes little sense to deprive a poor family of perhaps its only comfort—decent housing—because the extra mouth to feed belongs to a bastard rather than a legitimate child.

Common law marriage is another example of irrationality in eligibility standards. Much has been written concerning the effect of our antiquated welfare laws on marriage by low-income Negroes.[74] The Los Angeles Housing Authority treats common law marriage as grounds for denial of admission although it recognizes that "common-law marriage is not, in and of itself, indicative of an unstable family situation."[75] The authority bases its policy on two grounds: (*1*) failure of state law to recognize the legality of such marriages, and (*2*) a provision in the annual contributions contract requiring a family unit but

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. . . .

> The court wishes to emphasize that . . . [i]t is not holding that the federal Constitution, the Public Housing Act, state statutes, or the federal-state contract require the authority to permit the facility to be operated as a brothel. The authority is not required to tolerate criminal activity within the facilities, or disorderly conduct, or conduct amounting to abuse, or which seriously violates ordinary standards of decency.

Id. at 2723. While this restricts the holding to denial of flat prohibitions against illegitimacy, it can be read as support for finding unreasonable any standard condemning criminal activity outside the facilities or any minor violations of ordinary standards of decency.

70 Williams v. Housing Auth., 223 Ga. 407, 155 S.E.2d 923 (1967).

71 *See* p. 1123 & note 10 *supra.*

72 PUBLIC HOUSING IS THE TENANTS, *supra* note 17, at 11.

73 Rosen, *supra* note 4, at 237.

74 *See, e.g.*, U.S. DEP'T OF LABOR, OFFICE OF POLICY PLANNING AND RESEARCH, THE NEGRO FAMILY—THE CASE FOR NATIONAL ACTION (1965) (The Moynihan Report), *reprinted in* L. RAINWATER & W. YANCEY, *supra* note 10, at 4.

75 Letter of Nov. 13, 1967 from Jesse E. Spray, General Housing Manager of the Housing Authority of the City of Los Angeles, to Mr. Boyd Lemon of the ACLU of Southern California, on file in the Cornell Law Library [hereinafter cited as Letter of Jesse Spray].

excluding by definition "a group of unrelated persons living together."[76] The argument is hardly convincing. Common law marriage does not violate the goals of the public housing acts—although it may conflict with the white middle-class morality of the administrators—and is not an absolute impediment to admission in other jurisdictions.[77] In states recognizing common law marriages, the relevant provision of the annual contributions contract could be worded in a manner that avoids discriminating against common law marriage.[78]

Present substantive standards are also questionable because they lack specificity. Even where definite standards have been promulgated, catchall sections are frequently included to give "legal" grounds for reaching decisions thought desirable on their facts. For example, the "clear and present danger" category of the New York City Housing Authority's eligibility standards contains an "other evidence of behavior which endangers life, safety or morals" provision.[79] Although it may only demonstrate excessive caution, the provision has great potential for abuse. Similarly, the "nuisance" standard for evictions is open to criticism;[80] *i.e.*, definitions of such standards are likely to be either legalistic or vague.[81] Although management must protect other tenants from deleterious individuals, an examination of past uses of the nuisance standard "raises disquieting doubts whether management has restricted itself to clear-cut cases of gross misconduct."[82]

Thus, existing standards make social desirability the key issue in both admissions and evictions. The general tenor of the standards indicates that management has adopted an attitude of choosing the best of a bad lot. The ultimate result of this policy is exclusion of the very people most in need of decent housing. That this group should be

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76 *Id.*

77 A common law relationship where there is no impediment to marriage is treated as a "condition indicative of potential problems" by the New York City Housing Authority. GM-1287, *supra* note 39, at 5.

78 A common law marriage with children should satisfy the "group of two or more persons regularly living together related by blood, marriage or adoption" standard, since both parents are related to the children by blood.

79 GM-1287, *supra* note 39, at 3.

80 For the standards of the New York City Housing Authority's Tenant Review Board, see note 31 *supra*.

81 Housing officials who have studied leasing procedures across the nation have condemned the use of similar "legalese" in authority leases.

> One is prompted to ask whether it is really necessary for a housing authority, which has nine-tenths of the law on its side to begin with [to] have the legal equivalent of a Sherman tank to protect it against a destitute and defenseless tenant.

PUBLIC HOUSING IS THE TENANTS, *supra* note 17, at 34.

82 Friedman, *supra* note 7, at 661.

automatically ineligible reflects a definite need for a change in the rules. Meaningful standards can be drawn only after examining the nature of the problem family and reevaluating the proper role of public housing.

B. *The Problem Family and the Role of Public Housing—An Experiment*

Arguably, every slum family can be viewed as a problem family. As products of a totally deficient environment, they can hardly be expected to be anything else.[83] Some, however, have more problems than others:

> (a) nearly a quarter of urban Negro marriages are dissolved; (b) nearly one quarter of Negro births are now illegitimate; (c) as a consequence, almost one fourth of Negro families are headed by females, and (d) this breakdown of the Negro family has led to a startling increase in welfare dependency.[84]

These characteristics are reflected in the public housing population, fifty-three percent of which is non-white.[85] Typical problem family difficulties are illegitimacy, alcoholism, records of arrest, undisciplined children, and marital disharmony.[86] Present standards either deny admittance to families afflicted with such problems, or, if they are publicly housed when the trouble develops, will result in their eviction.

The argument in favor of such standards is that problem families impair the suitability of public housing projects as an environment in which low-income families can adopt middle-class values.[87] Defenders

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[83] Indeed, as physical organisms sensitive to and profoundly influenced by their surrounding environment, the human beings living in bad housing which is part of a defunct neighborhood forming a part of a chaotic and ill-functioning city, as most of them are, respond as we might reasonably have predicted them to: they throw up ambition, reject schools, engage in crime, allow their family structures to dissolve, abjure the values of the general society which we present to them, and when the pressures of frustration mount in the presence of a spark of organization, they riot. If we wish the bulk of our population to become citizens who are both productive economically and sound politically, we must contrive to place them in an environment which will naturally produce such behavior.

Cogswell, *Housing, the Computer, and the Architectural Process*, 32 LAW & CONTEMP. PROB. 274 (1967).

[84] L. RAINWATER & W. YANCEY, *supra* note 10, at 5.

[85] 50% are receiving assistance or benefits.
30% are elderly.
30% of the families with children are one-parent, broken families.
56% of all the families have moved in within the last five years.
82% of the elderly, and 25% of the non-elderly have no gainfully employed worker in the family.

PUBLIC HOUSING IS THE TENANTS, *supra* note 17, at 11.

[86] *See* Wirth, *Point-of-Entry-Work*, 14 J. HOUSING 127 (1957).

[87] [T]he problem families must be denied admittance into the projects if the projects are to become suitable places in which conscientious families can try to break the barriers which the slums and poverty have placed between them

of desirability as the test for public housing further argue, "It is clear that a vast majority of the taxpayers, the housing authority officials and particularly the occupants of the projects, want such a policy."[88]

The argument could not be more wrong. On legal grounds, it can be argued that public housing should start with the worst of the eligible group, since they need help the most. At a minimum, federal equal protection should require admission of a fair cross section of the poor—some good and some bad.[89] Common sense demands the same result. Families with problems are a part of every community and thus must be expected to make up a part of the public housing population.[90] For nearly two decades, the view of responsible housing officials has been that "[t]he problem cannot be eliminated by refusing to accept such families—it can only be shifted to other areas of the community, where there would be even less regard and concern for their welfare."[91] To paraphrase one such official, it is more important that problem families be helped than that the local project be "successful" in the sense of consisting of only lower-class families with middle-class values. Public housing, therefore, should include a disproportionately large number of problem families, and part of the job of public housing is to demonstrate that these problems can be mitigated by better housing.[92] Public housing is, in a large sense, a social experiment. Removing the barrier to admittance of the problem family need not result in deterioration of the social structure of the project. Although defenders of the present standards hypothecate that the high turnover rate in public housing is due in large measure to the presence of problem families,[93] the argument has no substance in fact. A 1958 survey by the Public Housing Administration found the major reason for moving out of public housing to be dissatisfaction with space.[94] Further, the proceedings at a

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and the rest of society. The alcoholics, the drug addicts, families with proven propensities for trouble and delinquency, and unwed mothers who show no signs of reform, must be barred. Ivory-tower critics seldom mention this as a possible remedy to many of the public housing difficulties because, at first glance, it seems a bit cruel. But there is no alternative if we sincerely want a housing program which can answer the social, as well as economic, needs of these low-income persons.

Ledbetter, *Public Housing—A Social Experiment Seeks Acceptance*, 32 LAW & CONTEMP. PROB. 490, 522 (1967).

88 *Id.*

89 *See* Harvith, *supra* note 45, at 240.

90 Hartman, *First "Problem Family" Step*, 14 J. HOUSING 118 (1957).

91 *Id.*

92 Wirth, *How Much "Selection,"* 8 J. HOUSING 91 (1951). *See also* Jenkins, *"Problem Families,"* 8 J. HOUSING 283 (1951).

93 Ledbetter, *supra* note 87, at 508.

94 PUBLIC HOUSING IS THE TENANTS, *supra* note 17, at 27.

White House conference indicate that the major cause of tenant dissatisfaction is the inhumane treatment they receive at the hands of local authorities—particularly the mistreatment both of mothers of illegitimate children and of tenants joining in community action.[95]

Thus, both housing officials and tenants recognize the need to reevaluate the role of public housing in light of the problem family. Public housing presents a unique opportunity for a concerted effort by all welfare agencies to work on problem families.[96] The National Association of Housing and Redevelopment Officials has already recognized the necessity of this change of position:

> [T]he original goals of public housing have undergone a vast change. . . . The social changes of the past twenty-five years have cast public housing in a new role: that of furnishing decent, low-cost living quarters for a typical population of elderly people and *troubled or troublesome families.* The trend for coming years certainly seems to be toward an increase of the social service role of housing authorities.[97]

The trend coincides with a general reevaluation and redirection of domestic social policy towards reaching the family unit instead of the individual.[98] What better opportunity could there be than a public housing project for testing the effect of extensive social services on those persons farthest removed from the mainstream of American life? But no valuable social service program can be instituted until eligibility and eviction standards which do not discriminate against problem families are formulated and adopted.

C. *Proposed Standards—Limits on Housing Authority Discretion*

The eligibility standards of the New York City Housing Authority[99] are perhaps the most detailed in the nation, but their emphasis on desirability as the test of admission is inapposite to the reevaluated role of public housing. Their usefulness is further restricted by the adoption of catchall standards.[100] Moreover, the adoption of more precise standards for eligibility than for evictions, although antisocial conduct is the bane of each, is an unjustifiable grant of discretion in the

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95 *Id.* at 5. The name of the conference, held in June, 1966, was "To Secure These Rights."

96 Borland, *Slums of the Mind*, 14 J. HOUSING 124 (1957).

97 Conclusion of a report of the Syracuse University Youth Development Center, adopted in PUBLIC HOUSING IS THE TENANTS, *supra* note 17, at 11 (emphasis added).

98 *See* Moynihan, *A Family Policy for the Nation*, 113 AMERICA, Sept. 18, 1965, at 280, 282.

99 *See* p. 1129 *supra.*

100 *See* p. 1133 *supra.*

tenant review branch of the authority.[101] Standards both reasonable and specific should be applicable to both eligibility and eviction determinations.

1. *Proposed Standards of ACLU of Southern California*

The ACLU of Southern California has attempted to promulgate such standards, but its efforts have been rebuffed by the Los Angeles Housing Authority.[102] Examination of the proposed standards, the Authority's objections thereto, and the existing standards of the New York City Housing Authority facilitates the determination of workable standards that should be acceptable to a socially conscious authority.

The ACLU proposal is concise and is properly preceded by a statement that its standards are to be "interpreted and enforced flexibly so as to qualify applicants and retain tenants in housing . . . ."[103] The proposal then liberally defines "nuisance" in terms of serious misbehavior.[104] Conduct constituting a continued nuisance is grounds for eviction or denial under both the ACLU proposal[105] and the New York City standards.[106] But the potential for abuse inherent in this standard and the apparent inability on the part of authorities to avoid confounding their tenants with meaningless legalese require elimination of the nuisance standard.

The next section of the ACLU proposals defines conduct that shall *not* constitute grounds for eviction or ineligibility:

(a) Common law marriage or illegal or nonlegal family relationships;
(b) Illegitimacy of children;
(c) Conviction of a misdemeanor;
(d) Any arrest or criminal proceeding which did not conclude in conviction of a felony;
(e) Felony convictions which do not suggest a continuing pattern of personal misbehavior seriously inimical to health, safety or morals;

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101 Compare the detailed eligibility standards discussed at p. 1129-34 *supra* with the more general eviction standards in note 16 *supra*.

102 11 WELFARE LAW BULL. 6 (Jan. 1968).

103 ACLU of Southern California, Proposed Regulations for the Housing Authority of the City of Los Angeles § 1 (1967) [hereinafter cited ACLU Proposal].

104 [C]onduct in public which is debasing in character and debauching in its influence on public morals, serious and continued disturbance of the peace of the project, seriously injurious to health or safety, substantial interference with the enjoyment or use of property or severe destruction of property.

Id. § 2.

105 *Id.* § 4(c).

106 *See* notes 15-16 *supra*.

(f) Failure of a wife or putative wife to file for divorce, separate maintenance or failure to provide when her husband or putative husband has abandoned the family; or

(g) Other conduct which, although not conduct of an exemplary citizen, does not seriously jeopardize the health, morals or safety of the project.[107]

The objection of the Los Angeles Housing Authority to subsection (a)—common law relationships—is discussed above.[108] The statutory definition of "family" is satisfied in states recognizing common law marriage, and consequently its use as a standard cannot be justified. Subsection (f) is basically concerned with financial requirements and, as such, is beyond the scope of this note.

No objection is made to subsection (b). Any illegitimacy standard violates the goals of public housing.[109] As conduct not seriously jeopardizing the health, safety or morals of the project, illegitimacy should be irrelevant. The New York City Housing Authority treats illegitimacy as an indicator of a "potential problem." The Los Angeles Housing Authority does not object to subsection (g). This fact further discredits the New York City Housing Authority's insistence on a category of "Conditions Indicative of Potential Problems." Although technically not a denial of eligibility, relegation of problem families to a "further evaluation" status is equivalent to a rejection. The existence of the "potential problems" category indicates recognition by the authority that no imminent danger lurks therein. Thus, the only possible use of such a category is the elimination of troublesome families, an unreasonable result in light of the reevaluated role of public housing. The entire "potential problem" category should be eliminated.

The objection to proposed subsections (c), (d), and (e), concerning law breaking, is that an all-inclusive listing of offenses to be used to determine eligibility or eviction does not give proper weight to the "many instances where an accumulation of minor offenses can easily be seen by an interviewer to add up to an unsatisfactory neighbor or tenant."[110] This might be paraphrased, "In our view, regardless of what the police, the courts of law, or the probation authorities say, you look like trouble—and we don't want families who might cause trouble." This attitude is responsible for many of the problems in public

107 ACLU Proposal § 3.

108 *See* discussion at pp. 1132-33 *supra*.

109 *See* p. —— *supra*.

110 Letter of Jesse Spray, *supra* note 75, at 2.

housing.[111] By accepting such families, social welfare agencies will be afforded a unique opportunity to reduce these minor conflicts with the law.

Section 4 of the proposal delimits conduct which *may* constitute grounds for eviction or denial:

(a) Continued drunkenness resulting in the serious disturbance of neighbors;
(b) Failure to provide adequate supervision for minor children allowing them to commit acts which seriously jeopardize the health, safety or morals of the project;
(c) Tenants who constitute a continued nuisance;
(d) Conviction of a felony which suggests a continuing pattern of personal actions which reasonably could jeopardize the health, safety or morals of the project including, without limitation, rape, child molestation or other such felonies; or
(e) Other similar conduct which would jeopardize the health, morals, safety or welfare of the project; or
(f) Delinquent rent payment record, excessive income or assets, improper or poor maintenance of the apartment entrusted to him and other similar factors.[112]

This section is overwritten. Although more concise than the New York City Housing Authority's eviction standards,[113] the emphasis on gross misuse of the facilities can be stated more succinctly. One section should cover any form of repeated disorderly behavior which seriously disturbs neighbors or seriously endangers the property of the authority. This precludes the need for a nuisance standard. Separate treatment should be accorded child misbehavior since it is important that the parents of the problem child be fully aware of the implications of misconduct. Like minor offenses, child misconduct is an excellent target for extensive social services. Thus, anything short of incorrigibility should not be a violation of the standard.

The basic objection to subsections (d) and (e) is that they should not be viewed as all-inclusive.[114] By their terms, ample leeway exists to include serious breaches not specifically treated. The "clear and present danger" category of the New York City Housing Authority

111 *See* New York City Housing Auth. v. Watson, 27 Misc. 2d 618, 623, 207 N.Y.S.2d 920, 926 (Sup. Ct. 1960) (dissenting opinion of Hofstadter, J.).

112 ACLU Proposal § 4.

113 *See* note 16 *supra.*

114 Letter of Jesse Spray, *supra* note 75, at 3.

includes an "illegal occupations" standard which condemns prostitutes, narcotics peddlers, professional gamblers, and zip gun makers or sellers.[115] It is difficult to see how prostitution or professional gambling carried on outside the project could seriously jeopardize the health, safety, morals or welfare of the tenants. Under the ACLU standards, such activities would properly be the subject of social service agencies.

The last standard is generally beyond the scope of this note, but apartment maintenance and "other similar factors" deserve attention. The slum family cannot be expected to adopt good housekeeping standards automatically. Thus, only "continual" improper maintenance should merit eviction. It is unclear what the phrase "other similar factors" is intended to cover. To facilitate interpretation by the tenant and to avoid possible abuse, the phrase should be deleted.

Section 5 of the proposal sets a two-year (or two dwelling places, whichever is less) "statute of limitations" concerning evidence of fitness of the applicant.[116] Two pertinent arguments are raised against this section by the authority. A person found ineligible on a prior occasion could, in quick succession, have two dwelling places and during this time have no antisocial conduct. He would be eligible under the ACLU standard.[117] The two-year standard seems reasonable, and, therefore, should be sufficient. The authority also contends that applicants and former tenants should be treated separately.[118] But unless the former tenant was evicted, there is no basis for separate treatment. If evicted, however, the authority should be allowed to examine his past conduct from the time of termination.[119]

2. *Proposed Standards Facilitating Admission of Problem Families*

A formulation of reasonable standards giving full effect to the suitability of public housing for social experiment is now possible:

PROPOSED SUBSTANTIVE (NON FINANCIAL) STANDARDS FOR USE IN DETERMINING ELIGIBILITY AND EVICTION

1. The following regulations shall be interpreted and enforced so as to qualify applicants and retain tenants in housing under the programs of the authority.

115 GM-1287, *supra* note 39, at 2.

116 ACLU Proposal § 5.

117 Letter of Jesse Spray, *supra* note 75, at 3.

118 *Id.*

119 A concluding section of the ACLU proposal attempts to establish procedural rules for denials of admission. *See* discussion at pp. 1123-27 *supra*, concerning the demands of due process in this area.

2. The following shall *not* constitute grounds for evicting a tenant or denying housing to an applicant;

(a) Common law marriage or illegal or nonlegal family relationship; or

(b) Illegitimate children; or

(c) Any arrest or criminal proceeding which did not conclude in a felony conviction; or

(d) Felony convictions which do not suggest a continuing pattern of personal misbehavior seriously inimical to public health, safety and morals; or

(e) Other conduct which does not seriously jeopardize the health, safety or morals of the project.

3. The following conduct *may* constitute grounds for eviction of a tenant or denial of an applicant;

(a) Repeated disorderly behavior resulting in the gross misuse of project property or serious imposition upon neighbors;[120] or

(b) Failure to provide adequate supervision for minor children whose conduct shows a continuing pattern of acts which seriously jeopardize the health, safety or morals of the project; or

(c) A felony conviction suggesting a continuing pattern of personal actions which reasonably could jeopardize the health, safety or morals of the project including, without limitation, rape, child molestation or other such felonies; or

(d) Continued grossly improper maintenance of the apartment entrusted to him resulting in conditions inimical to the health or safety of the project.

4. An applicant shall not be denied housing on grounds of his past conduct in other housing if his conduct during the two years prior to his application does not constitute grounds for denial under these regulations. Where the applicant is a former public housing tenant and was evicted under these regulations, the authority may examine past conduct dating from such eviction or for two years whichever is longer.

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120 This standard replaces the vague and confusing "nuisance" standard.

> In view of the nature of public housing the authority has little cause for legal action against tenants except to: (1) recover the premises in case of non-payment of rent, (2) remove the family for cause such as gross misuse of property or imposition [upon] neighbors, (3) removal for non-eligibility such as income above the maximum.

PUBLIC HOUSING IS THE TENANTS, *supra* note 17, at 34.

III

Conclusion

Mere formulation of substantive standards without their adoption by the agencies of public housing is of little significance. In light of the express policy of Congress to vest maximum discretion in local authorities, implementation at the national level is improbable. It is the task of public opinion to convince the local authorities of the efficacy of standards that give greater dignity to public housing tenants and a broader scope to the public housing program. Informed and concerned lawyers, through work with tenant organizations and bar association committees, can and must play an important role in awakening and applying public opinion.

Brian F. Toohey