Outreach: Bringing the Eligible into Federal Assistance Programs

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INTRODUCTION

"Outreach" has become part of the jargon of welfare law in the 1970's, yet the meaning and significance of the word remain largely unexplored. In some contexts outreach refers only to activities designed to publicize a program. In other contexts the term also includes efforts to facilitate the participation of eligible persons once they become aware of the program. This Note will use the word "outreach" to include both informational and noninformational activities designed to draw eligible persons into public assistance programs.

The evolution of outreach in certain major federally funded assistance programs will be sketched, beginning with the food stamp program, which first focused attention on the subject. By outlining a range of activities that might fall under the broad heading of "outreach," this Note will raise issues concerning the scope of outreach and the proper measure of outreach performance.

I

OUTREACH IN FEDERAL ASSISTANCE PROGRAMS

A. The Food Stamp Experience

1. Background

The Food Stamp Act of 1964, which created the food stamp program, requires participating states to comply with the federal statute and implementing regulations issued by the Food and Nutrition Service (FNS) of the Department of Agriculture, and to submit for FNS approval a plan of operation that meets federal standards. The original Act contained no explicit outreach direc-

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2 The food stamp program is supervised nationally by the Food and Nutrition Service (FNS) of the Department of Agriculture. Under this program, low-income households may purchase stamps at a discount and then use them at their face value to buy food at participating stores. The amount of the discount depends upon the household's income. 7 U.S.C. § 2016(b) (1970).
tive. Nevertheless, during the 1960's the Department of Agriculture conducted a "program promotion," using films, pamphlets, press conferences, and local organizations to publicize the food stamp program. Although this activity was primarily intended to "sell" the program to grocers and to provide general nutrition education for the poor, it also helped spread the word about food stamps. The Department's modest outreach efforts were not seriously challenged at high government levels for several years.

Then, in the late 1960's, a series of revelations focused national attention upon the tragedy of widespread hunger in America and the pathetic inadequacy of the nation's food programs. As a result, much criticism was aimed at the low rate of participation in the food stamp program. Critics blamed the inconvenient location of food stamp offices, their short or sporadic office hours,

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6 Id. The Consumer and Marketing Service (now FNS) began nutrition education programs in 1967 and 1968. Since 1968 the Extension Service of USDA has conducted these as the Expanded Food and Nutrition Education Program. See id.


8 See N.Y. Times, Apr. 10, 1967, at 13, col. 1; Examination of War on Poverty: Hearings Before the Subcomm. on Employment, Manpower, and Poverty of the Senate Comm. on Labor and Public Welfare, 90th Cong., 1st Sess., pt. 2, at 521-1066 (1967). One year later another exposé was released: Hunger, U.S.A., A Report by the Citizens' Board of Inquiry into Hunger and Malnutrition in the United States (1968) [hereinafter cited as Hunger, U.S.A.]. This influential study estimated that approximately 15% of the population of the United States was then living in poverty and that commodities distribution and food stamps were reaching only 18% of those persons. Id. at 50. The report criticized the Department of Agriculture's management of the food programs committed to its charge. See id. at 49-68.

Next came Their Daily Bread, a study by five national women's organizations, which explored the failure of the National School Lunch Act to reach many hungry children. See McGovern, Introduction to Kotz, supra at vii [hereinafter cited as Kotz (McGovern)]; Steiner, supra at 230. On May 21, 1968, CBS television followed up on the Citizens' Board report with a documentary entitled "Hunger in America," which further criticized the Department's ineffective operation of its food programs. A transcript from the documentary appears at 114 Cong. Rec. 15,568 (1968). Finally, in the spring of 1968, the poor marched on Washington. See N.Y. Times, May 3, 1968, at 1, col. 5; id., Apr. 29, 1968, at 23, col. 1.

9 E.g., Hunger, USA, supra note 7, at 10, 44. See Steiner, supra note 7, at 213-92. In September 1969, a Senate committee estimated that nationally only 21.6% of the poor living in counties where food stamps were available participated in the program. Senate Select Comm. on Nutrition and Human Needs, 91st Cong., 1st Sess., Poverty, Malnutrition, and Federal Food Assistance Programs: A Statistical Summary 29 (Comm. Print 1969). See also Kotz, supra note 7, at 55.
long lines, inaccessible officials, a lack of information about the program, and the stigma attached to participation. One private study urged the need for outreach workers to educate the public about food stamps and to "improve participation and utilization of the program."  

2. An Outreach Mandate

This background of concern over the low rates of participation in the food stamp program led Congress to amend the Food Stamp Act in December 197011 by adding an explicit directive to the states to undertake outreach activities. The amendment required that every participating state submit to FNS a plan of operation providing, among other things,

that the State agency shall undertake effective action, including the use of services provided by other federally funded agencies and organizations, to inform low-income households concerning the availability and benefits of the food stamp program and insure the participation of eligible households.12

This passage, commonly referred to as section 2019(e)(5), became the key to food stamp outreach.13

To implement the amendment, FNS required the states to submit outreach plans by late January 1972.14 These plans were to include the designation of one employee to organize state and local outreach programs, a description of proposed methods for conducting and evaluating outreach, a timetable for implementing the

9 See Hunger, USA, supra note 7, at 62; Kotz, supra note 7, at 55.
10 Hunger, USA, supra note 7, at 67.
12 Id. § 6(b), 84 Stat. at 2051 (amending 7 U.S.C. § 2019(e) (1970)).

Each state also had to submit annually a revised plan and a detailed report on outreach progress, including steps taken to reach specific target groups such as the elderly, ethnic groups, and migrant workers. The Department had approved forty-eight outreach plans by January 1974.

These statutory and administrative requirements for state outreach did not, however, secure compliance. During 1972 and 1973 a barrage of lawsuits attacked the outreach programs of twenty-two states. These efforts to achieve outreach reform through judicial action culminated in the 1974 federal district court decision in Bennett v. Butz.


In June 1973, food stamp recipients and two welfare recipient organizations sued the Secretary of Agriculture and subordinate administrators of the food stamp program. They charged, among other things, that the defendants had failed to implement the clear outreach mandate of section 2019(e)(5). The Secretary, plaintiffs alleged, had neither required adequate outreach plans from the states nor taken appropriate administrative steps to effect state compliance with the statute.

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15 See Food Stamp 1976 Rep., supra note 5, at 330.
16 See id. at 300.
17 Id. at 330.
18 See Rep. on Nutrition, supra note 14, pt. 1, at 47-48, 107-08. See also id. at 26-30 (participation rates by state).
19 See Food Stamp 1976 Rep., supra note 5, at 351. In 17 states these lawsuits were organized by the Food Research and Action Council (FRAC). Id. See generally 122 Cong. Rec. E4,294-95 (daily ed. Aug. 3, 1976) (reprint of Time magazine article discussing FRAC).
21 These organizations were the Northwoods Welfare Committee of Anoka County and the National Welfare Rights Organization. The court denied class action status on grounds that the relief requested by the plaintiffs would be the same whether or not they proceeded as a class. Id. at 1062 n.1.
22 In addition to the Secretary of Agriculture, the defendants were the Administrator of FNS and the Director of the Food Stamp Division of FNS.
23 Plaintiffs also claimed that the Secretary of Agriculture's Economy Food Plan was inadequate to afford participants the "opportunity to obtain a nutritionally adequate diet" as required by 7 U.S.C. §§ 2013(a), 2014(a), & 2016(a) (1970 & Supp. V 1975), and that the Secretary's failure to adjust benefits to meet increasing food costs during fiscal year 1973 was inconsistent with the statute. The court rejected both claims. 386 F. Supp. at 1063, 1069-70.
24 386 F. Supp. at 1062-63.
25 Id. Plaintiffs argued that because of this failure a significant portion of the $2.5 billion appropriated for the food stamp program for fiscal 1973 would remain unspent. Id.
In October 1974, District Judge Lord granted plaintiffs summary judgment on their outreach claims. He held that, given the clear congressional intent to make section 2019(e)(5) a forceful outreach mandate, defendants' failure to require effective state outreach constituted an abuse of administrative discretion. Judge Lord ordered the Department of Agriculture to review state outreach plans and to bring both the plans and their implementation into compliance with standards set by the statute and the court's opinion.26

The heart of the Bennett decision was its finding of a clear and forceful statutory outreach mandate. The court cited the strong language27 and the legislative history of section 2019(e)(5) to support its characterization of that provision as a clear mandate for effective outreach.28 In addition, Judge Lord noted that other 1971 amendments also reflected a congressional intent to strengthen and expand the food stamp program to truly meet the nutritional needs of the nation's poor.29 The court found further evidence of this intent in the pattern of increasing congressional appropriations for the program.30

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26 386 F. Supp. at 1072. The court held that the refusal to spend funds already appropriated constituted impoundment of those funds. Id. at 1071. It decided, however, that requiring a plan for expenditure of the funds would be less effective than requiring a plan for implementation of the statutory outreach mandate. The court thus ordered the latter relief, believing that expenditure of the leftover funds would follow. Id. at 1070-71.

27 The passage is quoted in the text accompanying note 12 supra.


But what does this mandate require of the federal government? The Bennett court listed four elements of the Secretary of Agriculture’s “total failure . . . to do what the Congress clearly intended him to do”: 31

1) delayed implementation of outreach at the federal level; 32
2) issuance of regulations and instructions that diluted or were inconsistent with the statute; 33
3) approval of state plans that failed to meet statutory standards; 34 and
4) failure to enforce administrative sanctions against states with defective outreach programs. 35

These four elements suggest an outline of federal responsibility for outreach under the current statute.

The legacy of Bennett has been substantial. Many of the lawsuits begun during the 1972-1973 food-stamp-reform campaign were settled in Bennett’s wake as states brought their outreach plans

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591, 610 (1972). According to the court in Bennett, “[t]he need for outreach was a principal basis for this increased appropriation.” 386 F. Supp. at 1064.

31 386 F. Supp. at 1065. The court, in conclusion, found “no basis in the voluminous record before [it] for any suggestions whatever that the defendants undertook and required effective action to insure the participation of [the] eligible poor.” Id. at 1069.

32 Id. at 1065. Judge Lord noted that the Secretary had waited three months before issuing proposed regulations, another three months before issuing final regulations, and almost another six months before issuing specific instructions to the states. Id. The court also noted that the January 1972 deadline for submission of state outreach plans fell over a year after the outreach amendment became effective, and that the Secretary had extended this deadline as plans trickled in late. Id.

33 Id. The statute directed the states to “insure the participation of eligible households.” 7 U.S.C. § 2019(e)(5) (Supp. V 1975). The Department’s proposed regulations had adopted that language (see 36 Fed. Reg. 7,240, 7,243, 7,245, 7,248 (1971)), but the final regulations diluted the mandate, substituting the word “encourage” for “insure” (see id. at 14,103, 14,105).

34 386 F. Supp. at 1065. The court listed some of the deficiencies that should have drawn administrative disapproval: failure to designate sufficient employees’ time and travel expenditures for federal reimbursement; failure to budget sufficient funds for outreach; failure to estimate the number of eligible persons not receiving food stamps or to determine the feasibility of reaching all eligible persons; failure to designate a full-time outreach coordinator with clearly defined responsibilities; and failure to explain how outreach would be effected where federal financial reimbursement was not requested. Id. at 1067.

35 Id. at 1065. The court held that this failure was an abuse of discretion. Id. at 1067. The Food Stamp Act then— as now— required the Secretary to inform state agencies of any failure to comply substantially with the Act. 7 U.S.C. § 2019(f) (1970). It also directed the Secretary to suspend the issuance of coupons to any state that failed to correct the non-compliance within a reasonable time. Id. However, the Secretary had not even applied these sanctions against “those states most derelict” in submitting their plans. 386 F. Supp. at 1066. Nor had he used his administrative clout to secure effective implementation of state plans. Id.
into compliance with federal standards. But one case prominent among Bennett's progeny, Tyson v. Norton, added important dimensions to the developing law of outreach. Building upon the Bennett foundation, the Tyson court read section 2019(e)(5)'s mandate broadly and suggested the type of requirements it imposes on the states.

4. Tyson v. Norton: The Mandate for the States

Tyson v. Norton was a class action against the Commissioner of the Connecticut Welfare Department. Unlike Bennett, which involved federal defendants and federal supervision of state outreach, Tyson was a suit against state officials in which plaintiffs challenged the form and implementation of a state plan. Plaintiffs alleged ten violations of the letter and spirit of the Food Stamp Act and its implementing regulations and instructions. One charge accused the state of violating the outreach mandate of section 2019(e)(5). Related charges complained of the state's failure to encourage immediate application by persons who inquired about the program and its refusal to allow telephone or home interviews for applicants who had difficulty coming for a personal interview. Judge Blumenfeld held for the plaintiffs on these is-

36 See Food Stamp 1976 Rep., supra note 5, at 331. See, e.g., Greater Cleveland Welfare Rights Org. v. Butz, [1974-1976 Transfer Binder] Pov. L. Rep. (CCH) ¶ 20,444 (S.D. Ohio 1975) (stip. & order). The court in that case ordered the state to establish a toll-free telephone number to provide food stamp information seven days a week. It also required the defendants to provide publicity to news media, appoint a full-time outreach coordinator, disseminate information to a large list of named organizations, keep certain written information available, and hold workshops to train outreach workers. 37 390 F. Supp. 545 (D. Conn.), aff'd in pertinent part sub nom. Tyson v. Maher, 523 F.2d 972 (2d Cir. 1975). 38 See id. at 549. 39 See id. 40 See id. Federal regulations require food stamp officials to process applications within 30 days of receipt. 7 C.F.R. § 271.4(a)(3) (1977). Plaintiffs were concerned because failure to inform persons of their right to apply immediately postponed the beginning of the 30-day period and thus the receipt of benefits. 41 See 390 F. Supp. at 549. In certain cases, an interview is necessary to establish eligibility for food stamp benefits. 7 C.F.R. § 271.4(a)(2) (1977). According to federal regulations, the interview may be conducted at the food stamp office, at the applicant's home, or by telephone. Id. Federal instructions restrict the circumstances under which home and telephone interviews may be substituted for office visits (FNS(FS) Instruction 732-1 (II) (B) (2), quoted in Tyson, 390 F. Supp. at 559), but Connecticut had established an even more restrictive policy: no telephone interviews, and home interviews only for applicants who were elderly and homebound and living alone. The state did not take into account illness, injury, child care, distance, or the availability of public transportation. See 390 F. Supp. at 558-59.
issues. His order outlined specific steps that the state had to take to secure “full participation” of eligible food stamp recipients.42

Judge Blumenfeld adopted Bennett’s finding of a strong statutory mandate.43 He stressed the importance of the informational aspect of the state’s program,44 but rejected the notion that the mandate required informational projects only.45 Rather, he characterized the statute as a “‘full participation’ amendment”46 to emphasize that a state is required not only to reach out to the eligible population, but also to clear the way for their participation.47 Even more, a state must take effective action to insure that participation.48 Under the banner of “insuring the participation,” Judge Blumenfeld required Connecticut to establish an official policy of encouraging immediate application by persons inquiring about the program.49 He also ordered the state to allow more telephone and home interviews to accommodate the homebound.50 He recommended the solicitation of outside groups to provide transportation and help applicants fill out applications, and also recommended expanding Connecticut’s circuit-rider program, which took the food stamp program to outlying areas.51 Thus the Tyson opinion brought whole new categories of administrative activity under the outreach umbrella.

42 390 F. Supp. at 574.
43 Id. at 552. See notes 27-30 and accompanying text supra. Judge Blumenfeld, however, refused to incorporate the federal administrative regulations and instructions as part of that mandate because, as he learned from Bennett, “[i]n this case the clear and obvious language of the statutory mandate with which the defendants [were] bound to comply [was] being distorted by administrative regulations.” 390 F. Supp. at 552. See note 33 and accompanying text supra.
44 Both the opinion’s analysis of the defendant’s outreach track record and the relief order stressed informational activities. 390 F. Supp. at 553-60, 570. The court went through Connecticut’s publicity efforts with a fine-toothed comb, considering such details as the number of outside organizations contacted and who had initiated those contacts. Id. at 556. The relief order required Connecticut to seek the cooperation of public and private groups, and to launch a “full-scale and continuing media campaign.” Id. at 574.
45 Id. at 562.
46 Id. at 550.
47 Id. at 552.
48 Id.
49 Id. at 574. But cf. Perez v. Lavine, 412 F. Supp. 1340, 1349 (S.D.N.Y. 1976) (“[I]t is reasonable to expect that someone desiring public assistance would specifically ask for an application if he is not automatically given one . . . .”).
50 390 F. Supp. at 574. The Second Circuit affirmed that part of the district court’s order requiring Connecticut to allow telephone or home interviews for homebound applicants. 523 F.2d at 974.
51 390 F. Supp. at 574.
5. Sequel

Subsequent administrative, judicial, and legislative activity reflects the impact of *Bennett* and *Tyson*. In April 1975, pursuant to the court's order in *Bennett*, the Department amended its regulations to include an elaborate provision that, together with section 2019(e)(5), constitutes the heart of the current food stamp outreach mandate:

> Each State agency shall initiate and monitor effective, comprehensive ongoing efforts performed cooperatively with other public and private agencies, religious, business and civic groups, retail trade associations, unions, community organizations, news media, and other groups, organizations and associations to inform low-income households eligible to receive food stamps of the availability and benefits of the program and to insure the participation of eligible households which wish to participate by providing such households with reasonable and convenient access to the program. Such efforts . . . shall . . . take into consideration the special needs of, among others, the elderly, the disabled, migrants, persons residing in rural areas, and ethnic groups. Each State agency shall designate one person to serve full-time as State Outreach Coordinator . . . and shall provide such coordinator with clerical and support staff . . . Each State agency shall provide project area outreach coordinators . . .

The Department also required submission of detailed new state plans of operation by July 1, 1975, and their implementation by August 1. Every state submitted a new outreach plan by the July 1 deadline, and by August 1976 all but four plans had been approved.

Despite administrative reform, however, many state programs remain susceptible to attack. In June 1976, a challenge to Michigan's food stamp outreach program was settled in federal district court.

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53 7 C.F.R. § 271.1(k) (1977). Later in April, the Department released new instructions. Under these, an outreach coordinator in every project area must send monthly reports to the state coordinator who, in turn, must send semi-annual reports and revised plans to the Department of Agriculture. The instructions outline the minimum content required for these reports. See Food Stamp 1976 Rep., supra note 5, at 331-32.
In September 1975, the Department amended its regulations again, pursuant to *Bennett*, to provide that persons applying for federally aided public assistance must be given the opportunity to apply for food stamps at the same time. 40 Fed. Reg. 43,017 (1975).
54 See Food Stamp 1976 Rep., supra note 5, at 331-32.
55 See id. at 392.
court with an unusually detailed stipulation for improving Michigan's outreach plan.\footnote{Westside Mothers Welfare Rights Org. v. Butz, [1977] Pov. L. REP. (CCH) ¶ 22,975 (W.D. Mich. June 15, 1976) (stip. & order). Plaintiffs named both federal and state administrators as defendants and blamed them for Michigan's "non-existent outreach efforts." Plaintiffs' Complaint at 4. The terms of the final settlement called for the annual computation of the number of persons eligible for food stamps in each county, the submission of annual county outreach plans to the state, the appointment of area food stamp "specialists" to specific assignments, and a system of written certification to record when persons seeking application or redetermination for AFDC, Medicaid, General Assistance, or Social Services were informed of their possible eligibility for food stamps. The parties also agreed to the submission of extensive information to the plaintiffs by Michigan's Food Stamp Coordinator in accordance with a stipulated time schedule.} As recently as December 1976, plaintiffs attacking a New York county's program of outreach to migrant farmworkers obtained a settlement under which the county agreed to implement a Food Stamp Migrant Farmworkers Program.\footnote{Thomas v. Kramer, 10 CLEARINGHOUSE REV. 802 (S.D.N.Y. Dec. 1, 1976) (consent order). Pursuant to the Food Stamp Migrant Farmworkers Program, the Commissioner of Social Services agreed to determine when the migrants would arrive at local farm labor camps. Upon their arrival, a food stamp worker would take food stamp applications to the camps. These applications would be processed immediately and, in emergency cases, benefits issued within 24 hours. During the farmworking season, the local Food Stamp Unit would employ a full-time worker for the Program. In addition, the Program would distribute to every labor camp sufficient pamphlets and posters in the language necessary to inform the workers about food stamps. \textit{Id.} at 803.}

Congress continues to review its stance on outreach. In 1976, the House and Senate each considered proposals to cut back the current outreach mandate to its purely informational component. The Food Stamp Act of 1976,\footnote{H.R. 13613, 94th Cong., 2d Sess., \textit{reprinted in} Food Stamp 1976 REP., supra note 5, at 1.} reported by the House Committee on Agriculture in September 1976, would have replaced the current mandate with the following provision:

\begin{quote}
\footnotesize
Such [state] plan of operation shall provide . . . (1) that the State agency shall inform low-income households about the availability, eligibility requirements, rules and benefits of the food stamp program, including, but not limited to, notification of all social security, aid to families with dependent children, supplemental security income, and unemployment compensation recipients, (B) not conduct any other outreach activities of a non-informational nature in those political subdivisions in which a community action program under the Community Services Administration is in operation and conducting food stamp outreach, and (C) use appropriate multilingual personnel and printed material in the administration of the programs in those portions of political subdivisions in the State in which a substan-
\end{quote}
tial number of members of low-income households speak a language other than English. . . .

Although the bill preserved and elaborated upon the requirement of informing the public about food stamps, it dropped all references to insuring participation—a conspicuous retreat from the holdings of Bennett and Tyson. The proposal drew fire in Congress, both from critics urging the continued need for broad outreach and from those arguing that the language of the amendment was too demanding and could be interpreted to require more than a reasonable level of outreach. The proposed National Food Stamp Reform Act that passed the Senate in April 1976 also emphasized informational outreach to the exclusion of other outreach activities. Like its counterpart in the House, the Senate proposal eliminated the "insure the participation" requirement. The legislative history suggests concern that the current mandate to "insure" participation demands unrealistically extensive efforts by food stamp administrators.

B. Outreach in Other Programs

The food stamp experience called attention to a need now officially acknowledged in other programs as well. Outreach has been expanded, for example, into other nutrition programs ad-

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59 Id. § 10(e), Food Stamp 1976 Rep. at 9-10. The reference to the Community Services Administration reflects the Committee's concern that USDA's outreach efforts were being duplicated by CSA. See Food Stamp 1976 Rep., supra note 5, at 333-35. CSA (formerly the Office of Economic Opportunity) operates the Senior Opportunities and Services program (SOS), which offers a variety of services, including outreach, to promote the utilization of government services by the elderly poor. See Senate Special Comm. on Aging, Developments in Aging: 1975 and January-May 1976, S. Rep. No. 998, pt. 1, 94th Cong., 2d Sess. 199-200 (1976) [hereinafter cited as Devs. in Aging 1975-1976].

60 The Committee was particularly concerned that food stamp information reach recipients of Social Security and SSI. Food Stamp 1976 Rep., supra note 5, at 147.

61 See, e.g., id. at 626, 630 (dissenting views).

62 See, e.g., id. at 720 (dissenting views).


64 The Senate proposal directed the use of multilingual staff and printed material. Id. § 7(k), 122 Cong. Rec. at S5,286. It also provided that "[f]ederal agencies that administer programs for needy people, including, but not limited to, supplemental security income and social security programs, shall make every reasonable attempt to inform recipients . . . of the existence of the food stamp program and its income and resource guidelines." Id. § 7(a)(2), 122 Cong. Rec. at S5,286.

65 See id. § 7(b), 122 Cong. Rec. at S5,286.

ministered by the Department of Agriculture. However, a comparison of the food stamp program with other federal public assistance programs shows that the government has been inconsistent in its acknowledgment of the need for outreach.

1. Aid to Families with Dependent Children

Aid to Families with Dependent Children (AFDC) provides cash benefits for the basic living expenses of certain needy persons. Like the food stamp program, AFDC is administered by the states in accordance with plans approved by a supervising federal agency which promulgates regulations binding on the states. But there is no statutory outreach provision for AFDC comparable to the "inform and insure" mandate of the food stamp program. One AFDC regulation does require the states to inform applicants about "coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance." Since it applies only to applicants, however, this regulation requires no "reaching out" to inform the eligible or to solicit participation. The AFDC program takes a "doorstep approach" to outreach, specifically requiring only measures that facilitate the participation of persons who have already taken the initiative by expressing interest in applying.


69 The Department of Health, Education, and Welfare supervises state administration of AFDC.

70 45 C.F.R. § 206.10(a)(2)(i) (1976). This regulation applies generally to programs under the Social Security Act.

71 In December 1976, the Department proposed amending this provision to require Social Security officials to furnish this information not only to applicants but to anyone who inquires about the program. 41 Fed. Reg. 56,832 (1976). Even this revision, however, would not require much "reaching out," since it assumes preexisting knowledge and interest on the part of the inquirer.

72 Cf. Perez v. Lavine, 412 F. Supp. 1340 (S.D.N.Y. 1976). Plaintiffs in that class action against New York City welfare administrators argued that the failure of officials to provide an application automatically to persons who came to the welfare office, the deterrent effect of the long lines at those offices, and the necessity of return visits all violated the AFDC
2. Older Americans Act Programs

The purpose of the Older Americans Act is to coordinate and promote the resources and services available to the elderly in the areas where they live. Because of its purpose, the legislation is imbued with a spirit of outreach.

Title II of the Act established in HEW an Administration on Aging (AoA). The Commissioner of AoA is directed to operate a National Information and Resource Clearing House, which provides agencies and organizations with information about programs for the elderly. The Clearing House must also "encourage the establishment of State and local information centers and provide technical assistance to such centers . . . to assist older persons to have ready access to information."

Title III of the Older Americans Act authorizes federal grants for a variety of state and local "social services" to the elderly. The "social services" eligible for Title III funds include "services designed to encourage and assist older persons to use the facilities and services available to them."

Every participating local-statute and regulations, which state: "[A]ll individuals wishing to make application for aid to families with dependent children shall have opportunity to do so . . . ." (42 U.S.C. § 602(a)(10) (1970)); "Each individual wishing to do so shall have the opportunity to apply . . . without delay" (45 C.F.R. § 206.10(a)(1) (1976)). 412 F. Supp. at 1343-44. The court, however, refused to construe these provisions so broadly: "As long as the individual has the opportunity to obtain an application form upon request at the Income Maintenance center, he has the 'opportunity to apply' for assistance." Id. at 1353.

76 Id. § 3011.
79 Id. §§ 3021-3029.

Here again a state's participation depends upon federal approval of the state's plan, in this case by the Commissioner on Aging. Id. § 3025. The state agency, in turn, must approve the plans of each "planning and service area" before federal money may flow through to help finance that area's "social services." Id. § 3024. See generally DEVS. IN AGING 1975-1976, supra note 59, pt. 2, at 47-50 (AoA report).

Outreach is usually an ancillary feature of a government program, the means by which eligible persons are drawn into the program. Title III, however, differs from other programs discussed in this Note in that its entire nature is outreach. Thus Title III and regulations promulgated under it contain some of the strongest outreach language in the law.

82 Id. § 3022(1)(C). The federal regulations suggest examples that reinforce the promi-
tility must establish a system to "facilitate accessibility to and utilization of all social services provided within the geographic area." Title III also provides for a network of state and local "information and referral sources" in sufficient numbers to guarantee that all older persons have "reasonably convenient access" to such services.

Title VII of the Older Americans Act allocs federal funds to states with approved plans for distributing those funds, by grant or by contract, to recipients who agree to operate nutrition programs for the elderly in accordance with federal standards. Outreach is emphasized in Title VII programs, although it is an ancillary feature. The recipient of a state's grant or contract must provide for "comprehensive and ongoing outreach activities" from each congregate meal site to assure that the maximum number of the hard-to-reach eligible individuals participate in the nutrition project. The recipient project must provide sufficient qualified staff to "assure satisfactory conduct of . . . outreach." Each program must also offer information and referral services and, if necessary, transportation and personal escort services to and from congregate meal sites.

The program must provide: (1) information services employing a specially trained staff—bilingual, if necessary—to inform needy elderly of services available and to help them take advantage of those opportunities; (2) referral services for placing individuals in contact with agencies providing services they need; (3) transportation where necessary to facilitate access to social services; (4) "search and find" activities; (5) escort services; and (6) counseling to aid in the utilization of health and social services. 45 C.F.R. § 903.2(g) (1976).

An information and referral (I & R) source (A) maintains current information with respect to the opportunities and services available to older persons, and develops current lists of older persons in need of services and opportunities, and (B) employs a specially trained staff to inform older persons of the opportunities and services which are available, and assists such persons to take advantage of such opportunities and services. 42 U.S.C. § 3024(c)(3).

Aoa's goal was to make I & R reasonably available to all older persons by the end of fiscal year 1975. Devs. in Aging 1975-1976, supra note 59, pt. 2, at 54 (Aoa report). See generally id. at 70-71 (Aoa report).

Congress added Title VII in 1972. These programs provide many elderly persons with at least one hot, nutritious meal five days a week at accessible sites. Id. § 3045e(a)(1). The meals may also be home-delivered. Id. § 3045e(a)(3). See generally Devs. in Aging 1975-1976, supra note 59, pt. 1, at 154-55; id., pt. 2, at 50-52 (Aoa report).


3. Supplemental Security Income

Outreach in the new Supplemental Security Income (SSI)91 program is now a live issue in Congress.92 SSI, a federal program administered by the Social Security Administration (SSA), provides cash assistance to the elderly, blind, and disabled. In January 1974 it replaced state-administered programs for these groups.93 However, because planners envisioned that SSI would serve many needy persons not covered by the old state programs,94 they anticipated the need for outreach to solicit the participation of those persons.

The SSI statute contains no reference to outreach. Nevertheless, SSA has spent millions of dollars and conducted several programs since 1973 to draw potentially eligible persons into the program.95 In 1974, it engineered “SSI-Alert,”96 a large-scale outreach project in which SSA collaborated with AoA and local consortia of advisers under the general management of the American Red Cross. Over 50,000 volunteers participated in the varied and

94 See SSI Oversight Hearings, supra note 92, at 142 (Study Group report).
often ingenious outreach activities carried out under SSI-Alert — canvassing neighborhoods, conducting interviews, finding local eligible persons and convincing them to sign up for SSI. Then, in its "leads program," SSA combed the Social Security rolls to identify persons whose payments were low enough for SSI eligibility. The search identified about 5.2 million individuals, who were given special notice of their possible eligibility for SSI. Since its initial spurt of outreach activity, SSA has publicized through the news media and conducted pilot projects to experiment with new means of disseminating information about SSI. It has enlisted the cooperation of federal agencies, especially AoA, state and local welfare agencies, local private organizations, and welfare rights groups to assist in its outreach efforts.

Despite these efforts, participation in SSI has been disappointing. From 1974 to the present, Congress and a procession of witnesses testifying before its committees have expressed concern over the gap between those estimated to be eligible for SSI and those on the rolls—a gap of at least two million persons. Some par-
participants in the debate attribute the low participation rates to SSA's mismanagement of outreach. They complain of the lack of national news publicity at the outset of the program, a time when people were naturally hesitant about SSI. One critical study of SSI's early operations noted that volunteers and staff were uninformed and unprepared to cope with the onslaught of initial claimants. Criticism of recent SSI outreach activity has focused on understaffing and inadequate training of personnel, the lingering stigma attached to the program, and the lack of coordination with other assistance programs, and has emphasized the continuing need for publicity. Others have criticized SSA for delegating outreach responsibilities to local offices. If SSA has in fact largely aban-

Group, an outside body formed in 1975 to review and criticize SSI's early operations, concurred with SSA on this point. In its final report it recommended that the original projections of the SSI population be discarded. See SSI Oversight Hearings, supra note 92, at 137-38 (Study Group report).

However, the difficulty of obtaining an official revised estimate (see 1977 Appropriations Hearings, supra note 96, pt. 6, at 297, 305, 322, 326 (testimony of SSA Comm'r Cardwell); SSI Oversight Hearings, supra note 92, at 137-41 (Study Group report)) has kept the issue of the "lost eligibles" prominently before Congress. Hearings continue to explore why participation rates have been so low and whether a specific outreach amendment would help. See, e.g., SSI Oversight Hearings, supra note 92, at 23-26, 57-58 (testimony of SSA Comm'r Cardwell). See also SSI 1976 AMENDMENTS, supra note 92, at 5-6, 17, 37-38 (proposed outreach amendment).

106 See, e.g., Future Directions, supra note 95, pt. 6, at 516 (statement of Scott Hancock, former SSI-Alert Regional Director).

107 SSI Oversight Hearings, supra note 92, at 145 (Study Group report). See also Administration of SSI, supra note 95, at 4 (opening statement of Rep. Gibbons). One critic complained that the information gathered by SSI-Alert was sent to district Social Security offices which were already overworked and confused in the first months of the program's operation. 1975 Pub. Assistance Hearings, supra note 96, at 470 (testimony of Rep. Burton).


109 See, e.g., Future Directions, supra note 95, pt. 7, at 576, 579 (testimony of William Hutton, Executive Director, Nat'l Council of Senior Citizens); 1975 Pub. Assistance Hearings, supra note 96, at 643 (statement of Janet Bruin, Community Org. Director, Philadelphia Corp. for Aging).

110 See, e.g., 1975 Pub. Assistance Hearings, supra note 96, at 94-95 (statement of Wilbur J. Schmidt, Chairman, Nat'l Council of State Pub. Welfare Adm'rs); id. at 618 (statement of Fernande R. Vandenberg Duffly, Legislative Coordinator, SSI Advocacy Center); SSI Oversight Hearings, supra note 92, at 132 (Study Group report).

111 The SSI Study Group recommended a "stepped-up outreach information program" and encouraged SSA to follow up on outreach efforts and monitor their effectiveness. SSI Oversight Hearings, supra note 92, at 144. They particularly recommended the inclusion of a question on the application form asking how the applicant had learned about SSI. Id. at 141, 144.

112 In June 1975, a legal services representative reported to Congress that "[d]irect outreach efforts are out, and [their] functions have been delegated to local Social Security
done outreach to local offices, the inertia of local administrators may have provided Congress with good reason for taking more direct control. Wilbur J. Schmidt, Chairman of the National Council of State Public Welfare Administrators, reported in 1975 that outreach in the states has been half-hearted: "[A] real red-hot, intensive effort to go out and find them all, you don't know anybody who is doing this." Congressional SSI hearings have provided an excellent forum for airing the whole matter of outreach in public assistance programs. Regardless of the conclusions Congress reaches, it has generated a small library of testimony that raises searching questions about legislated outreach and underscores the urgent need for answers.

II

ISSUES

A. The Scope of Outreach

A discussion of the scope of outreach involves three types of questions: definitional (how much is included in the word "outreach"?); interpretive (how much is required by a given outreach mandate?); and normative (how much should be required?). Despite the vogueish use of the word, "[a] basic point of disagreement on outreach is what the term means." The semantic question

offices who [sic] have insufficient staff to even process applications with promptness." 1975 Pub. Assistance Hearings, supra note 96, at 663 (testimony of Jonathan M. Stein, Community Legal Servs., Inc.).

113 See SSI Oversight Hearings, supra note 92, at 25 (testimony of SSA Assoc. Comm'r Bynum).


115 The normative question might be further broken down into two questions: "How much should be done?" and "How much should the law require to be done?" Consider a Congress that believes certain outreach activities should be undertaken to implement assistance programs. It amends Program A to require the states to undertake these activities as a condition to receipt of federal funding. Program B, however, is federally administered, and the federal agency already carries out these activities. In that case, Congress might find it unnecessary to anchor the program's outreach in law. Precisely this pattern may help explain the absence of an outreach mandate in SSI. See notes 95-103 and accompanying text supra.

116 Food Stamp 1976 Rep., supra note 5, at 333. For example, although the key outreach provision in the Food Stamp Act does not contain the word "outreach," Judge Lord in Bennett used the word to include both the "inform" and the "insure" components of the mandate. See 386 F. Supp. at 1065. In Tyson, however, Judge Blumenfeld concluded that the word as coined by FNS encompassed informational activities only; he thought the term
dissolves, however, upon careful definition of terms. The remaining questions raise the crucial and more interesting issues—one of interpretation, the other of pure policy.

A court or administrator confronted with any outreach directive faces the interpretive question. The Bennett and Tyson courts answered this question for the food stamp program by grounding their interpretations in statutory language and legislative history. Administrative regulations often supply additional detail. To the extent that these sources fail to delimit the reach of the mandate, however, administrators and courts will naturally import policy considerations into their interpretations. The court in Tyson, for example, could hardly have extracted the requirement of a full-time outreach director from the simple words “inform” and “insure” without considering how much outreach those words should require. So, although answering the interpretive question requires deference to the perimeters set by the language of a given mandate, it will often entail resort to the normative question. But the pure policy question confronts administrators of programs without outreach provisions and legislators designing or revising outreach mandates. Recent deliberations in Congress over the need for outreach in SSI programs illustrate the effort to answer this normative question.

Solutions to either the interpretive or the normative question

"full participation" better expressed the broad concept he was espousing in that case. See 390 F. Supp. at 552 n.4; notes 44-47 and accompanying text supra. Today the food stamp regulations explicitly include in the term "outreach" both informational activity and efforts to insure participation through provision of "reasonable and convenient access." 7 C.F.R. § 271.1(k) (1977).

The regulations for Title III of the Older Americans Act also illustrate the confusion between outreach as solely informational activity and outreach as something more. These regulations classify outreach with information and referral as an example of a service to "assist older persons to become aware of the social services available"—as distinguished from those services (transportation, escort) that "assist [older persons] in having access to" those services. 45 C.F.R. § 903.79(b) (1976) (emphasis added). Yet elsewhere the same regulations speak of outreach services as "including search and find activities, which seek out and identify hard-to-reach individuals and assist them in gaining access to needed services." Id. § 903.2(g)(5)(i) (emphasis added).


118 See 390 F. Supp. at 574.

119 This will be especially true for more specific directives. A mandate to inform the public about a program, for example, cannot reasonably be interpreted to require transportation services for applicants—even if the interpreter believes such transportation services are a desirable form of outreach.

120 See notes 105-14 and accompanying text supra.
cover a spectrum from "disseminating information" through "encouraging participation" to "facilitating access to participation." Subsumed under these general categories are many conventional and creative activities which have been suggested, tried, or required in the name of outreach.

1. Outreach as Informing

At a minimum, outreach requires distribution of information. But controversial questions lurk behind this seemingly simple starting point. For example, should administrators ensure that information is merely available somewhere, that it is readily accessible, or that it is actively disseminated? In its original regulations implementing the 1971 food stamp outreach amendment, FNS indicated that "any communicative effort" would suffice. HEW regulations for programs under the Social Security Act require only that certain written material be made available in every district Social Security office and that specified information be provided to applicants. But the clamor for more effective outreach signifies a movement away from the passive era of pamphlets in an office rack or answers on request. Some agencies have taken the initiative with innovative efforts to actively disseminate publicity about their programs. Where administrators demonstrate a lack of imagina-

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121 For a more detailed breakdown of possible categories, see S. Kamerman & A. Kahn, Social Services in the United States 435-39 (1976) [hereinafter cited as Kamerman & Kahn].


124 45 C.F.R. § 206.10(a)(2)(i) (1976). HEW now proposes to make clear that Social Security officials must supply this information to anyone who inquires about the program. See note 71 supra.

125 See, e.g., SSI Oversight Hearings, supra note 92, at 141-44, 151-53 (Study Group report).
tion or enthusiasm for outreach, the law may step in to suggest, or even to require, particular activities. The range of possibilities is broad.

Effective outreach certainly requires the availability of explanatory publications. But these should be actively disseminated—for example, via direct mailings, flyers accompanying utility bills or church bulletins, brochures sent home with school pupils, information booths at shopping centers or polling places, or even distribution to persons waiting in line at gas stations.

Use of the media can be most effective. Recognizing this, the court in *Tyson* ordered a “full scale and continuing media campaign,” and particularly suggested contacts with radio and television stations that orient their broadcasting toward certain ethnic populations. After conducting pilot outreach projects for SSI in 1975, SSA concluded that “[u]se of the mass media will reach most of the intended audience. Continuous use of the media will reach almost all of the intended audience in time.”

Administrators should also solicit the help of private organizations for disseminating information. Legal aid clinics and various advocacy groups, for example, are in an excellent position to assist with outreach. Private groups such as churches and synagogues, unions, senior citizens’ groups, retired workers’ associations, veterans’ groups, and lodges and fraternal orders can be especially

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128 See Future Directions, supra note 95, pt. 7, at 552 (statement of AoA Comm’r Arthur S. Flemming).
129 390 F. Supp. at 574.
130 Id. at 556.
131 SSI Oversight Hearings, supra note 92, at 153 (Study Group report). Those experiments showed that the “most effective media were television, newspapers and radio (in that order).” Id.
132 See id. at 25 (testimony of SSA Assoc. Comm’r Bynum). SSA designed its massive SSI-Alert program around cores of private organizations, which planned, supervised, and operated local SSI outreach. See notes 96-103 and accompanying text supra. For a general discussion of the value of third-party “intercessors” for effecting outreach, see STEINER, supra note 7, at 322-24.
133 See generally SSI Oversight Hearings, supra note 92, at 126-31 (Study Group report).
helpful in reaching their own members. Use of private organizations is so fundamental to informational outreach that it is sometimes specifically required by law.\textsuperscript{134}

Statutes also acknowledge that other public agencies can provide a fertile resource for effecting successful outreach.\textsuperscript{135} The food stamp outreach mandate, for example, specifically requires states to make "use of services provided by other federally funded agencies and organizations."\textsuperscript{136} The Older Americans Act, with its provision for a National Clearing House\textsuperscript{137} and plentiful information and referral sources,\textsuperscript{138} also taps this resource. The long-range goal of these outreach efforts should be to form a network of government agencies that provide cross-information on all available public assistance programs.

Beyond these classic resources, informational outreach may take many creative forms: posters, telephone and door-to-door canvassing, exhibits, lectures, and workshops. At least two courts have advocated the publication of a toll-free telephone number that interested persons can call for information about a program.\textsuperscript{139} Even requiring that local offices and program sites be "well marked and clearly identifiable"\textsuperscript{140} as public service facilities serves an outreach function. In choosing among the array of methods available for disseminating information, administrators, legislators, and judges should bear in mind that they are also determining the "reach" of the program. Administrators in particular should continually experiment and reevaluate to determine the relative effect-

\textsuperscript{134} The food stamp regulations, for example, call for state agencies to "initiate and monitor effective, comprehensive ongoing efforts performed cooperatively" with a long list of suggested groups. 7 C.F.R. § 271.1(k) (1977). In Greater Cleveland Welfare Rights Org. v. Butz, [1974-1976 Transfer Binder] Pov. L. REP. (CCH) § 20,444 (S.D. Ohio 1975) (stip. & order), the court required the state to disseminate food stamp information to a long list of named organizations. See also Tyson v. Norton, 390 F. Supp. 545, 574 (D. Conn.), aff'd in pertinent part sub nom. Tyson v. Maher, 523 F.2d 972 (2d Cir. 1975); SSI 1976 AMENDMENTS, supra note 92, at 37-38 (proposed SSI amendment authorizing use of private organizations for outreach).

\textsuperscript{135} See notes 102-03 and accompanying text supra.


\textsuperscript{137} See notes 76-78 and accompanying text supra.

\textsuperscript{138} See notes 84-90 and accompanying text supra.


\textsuperscript{140} This is the language used in the Social Security regulations for state agency offices. 45 C.F.R. § 205.170(a) (1976).
tiveness of different outreach activities.\textsuperscript{141}

A second unsettled question complicates the matter of outreach as dissemination of information: outreach to whom? Some provisions could be read to imply that agencies should aim their outreach efforts at the general public.\textsuperscript{142} Others speak of reaching out to the potentially eligible.\textsuperscript{143} Still others single out specific "target groups"—the elderly,\textsuperscript{144} the disabled,\textsuperscript{145} rural residents,\textsuperscript{146} ethnic groups,\textsuperscript{147} migrants,\textsuperscript{148} the poor\textsuperscript{149}—as the proper focus of outreach activities.\textsuperscript{150}

Should administrators direct their publicity to the general public or aim at subsets of the total population where the "potentially eligible" are likely to be found? These are mostly distinctions of degree. All outreach—even that directed toward the "general public"—implies some audience, thus favoring one set of persons over another. Television spots reach persons who watch television; pamphlets in an office reach those who come in; posters reach persons who pass through the areas where they are posted. Choosing specific outreach activities inevitably risks targeting some persons to the exclusion of others. Such choices should stem from informed consideration of the classes of persons most likely to be eligible for a program and the limits of administrative resources. In


\textsuperscript{142} E.g., 45 C.F.R. § 903.50(d)(1) (1976) (Title III, Older Americans Act).


\textsuperscript{144} E.g., 7 C.F.R. § 271.1(k) (1977) (Food Stamp regulations).

\textsuperscript{145} E.g., id.

\textsuperscript{146} E.g., id.

\textsuperscript{147} E.g., id.

\textsuperscript{148} E.g., Thomas v. Kramer, 10 \textit{CLEARINGHOUSE REV.} 802 (S.D.N.Y. Dec. 1, 1976) (consent decree); 7 C.F.R. § 271.1(k) (1977) (Food Stamp regulations).

\textsuperscript{149} E.g., 45 C.F.R. §§ 909.22, .23 (1976) (Title VII, Older Americans Act regulations). Because elderly persons are eligible for Title VII meals without regard to financial need, the targeting of particular areas for meal sites is especially important to assure that the program reaches the most needy.

\textsuperscript{150} The targeting of other groups has also been suggested. See, e.g., \textit{Administration of SSI, supra} note 95, at 441 (statement of Douglas Watson, Director of Serv. Research, Dea
dness Research & Training Center, N.Y.U.) (recommending that SSI target deaf); \textit{id.} at 720-21 (statement of Richard Hamilton, Executive Director, Nat'l Caucus on the Black Aged) (recommending that SSI target elderly, especially elderly blacks in rural South); \textit{id.} at 252 (statement of Rep. Fraser) (recommending that SSI target blind and disabled children, and persons who stand to gain only a few dollars from the program); \textit{DEVS. IN AGING} 1975-1976, \textit{supra} note 59, pt. 1, at 183 (recommending outreach to isolated elderly members of minority groups).
the absence of more specific directives, administrators and judges selecting either the mode of publicity or appropriate target groups might borrow from the due process standard of notice to interested parties of the commencement of an action and undertake to provide notice reasonably calculated to reach eligible persons.

A third informational outreach issue involves the required content of the information promulgated. The Food Stamp Act requires only information on the "availability and benefits" of the program; the House's proposed Food Stamp Act of 1976 would have expanded that requirement to include "availability, eligibility requirements, rules and benefits." In addition to "availability" and "benefits," Tyson required food stamp officials to publicize changes in the program, application procedures, and the location of certification offices. Some advocates recommend publicizing the hours of local food stamp offices and the verification documents needed to establish eligibility. Publicity might also include

155 Food Stamp Act of 1976, H.R. 13613, 94th Cong., 2d Sess., § 10(e)(1)(A), reprinted in Food Stamp 1976 Rep., supra note 5, at 9 (emphasis added). The Committee felt that the addition of this language was especially necessary since the proposed Act would have drastically changed "eligibility requirements" and "rules." Id. at 334. Cf. Rep. on Nutrition, supra note 14, at 49-52 (ignorance of eligibility requirements causes nonparticipation in food stamp program).
156 390 F. Supp. at 574. Tyson also held that food stamp officials must tell interested persons of their right to apply immediately, and encourage them to do so. Id. See note 116 supra.
157 See Food Stamp 1976 Rep., supra note 5, at 333.
information about ancillary services,\textsuperscript{158} means of procuring benefits,\textsuperscript{159} and the "objectives and results" of the program.\textsuperscript{160} Administrators should be required to publicize full and specific information, limited only by the need to accommodate the medium of dissemination and the understanding of those addressed.\textsuperscript{161}

Whatever the substance of the message, publicity will not truly inform unless it speaks in appropriate language. Perhaps the need for clear, communicative form inheres in the word "inform"; perhaps it is taken for granted. In either case, the law rarely specifies that a program's publicity must "clearly and specifically describe,"\textsuperscript{162} the program in "simple, understandable terms."\textsuperscript{163} The related necessity of furnishing information in the language of the persons addressed has received more attention. In recent years, courts and legislators have compelled administrators to respond to the need for multilingual printed material and personnel.\textsuperscript{164}

\textsuperscript{158} See, e.g., 1975 Pub. Assistance Hearings, supra note 96, at 547 (statement of Jean Janover, Citizens' Comm. on Aging of the Community Council of Greater New York) (advocating informing SSI recipients of availability of housekeeping, foster care, counseling, and institutional placement). \textit{See also id.} at 378 (statement of Martin Hochbaum, Am. Jewish Congress) (suggesting that SSI recipients be informed of transportation discounts, recreation services, nutrition programs, etc—services not part of SSI program).

\textsuperscript{159} See, e.g., 45 C.F.R. § 222.28 (1976). \textit{See also SSI 1976 Amendments, supra note 92, at 37 (proposed SSI amendment).}

\textsuperscript{160} See, e.g., 45 C.F.R. § 909.27(a) (1976). Social Security regulations offer a checklist of information that officials must provide—but only to applicants. \textit{See} note 124 and accompanying text supra.

The dissemination of some of this information is not outreach, and may even oppose outreach goals. Publicizing eligibility requirements, for example, discourages applications by those who do not believe they meet the requirements. This self-screening aids administrative efficiency by reducing the number of ineligible applicants. If the information is misleading or incomplete, however, eligible persons may rule themselves out. \textit{See Rep. on Nutrition, supra note 14, at 50-51. And if eligibility requirements are complex and confusing (as they are apt to be), the layman's paraphrase contained in program publicity may well be misleading or incomplete. Clearly a balance must be struck between the need for outreach and administrative efficiency. Cf. 1975 Pub. Assistance Hearings, supra note 96, at 337-38, 343 (statement and testimony of Anne Silverstein, Staff Attorney, Nat'l Senior Citizens Law Center) (concern expressed over prescreening by outreach canvassers).}

\textsuperscript{161} Perhaps the best informational mandate is found in the regulations for the Older Americans Act: "The State plan shall provide for a continuing program of public information specifically designed to assure that information about the programs and activities . . . are [sic] effectively and appropriately promulgated throughout the State." 45 C.F.R. § 903.50(d)(1) (1976) (emphasis added).

\textsuperscript{162} \textit{Id.} § 205.146(c)(1)(i).

\textsuperscript{163} \textit{Id.} § 206.10(a)(2)(i).

\textsuperscript{164} See, e.g., Asociacion Mixta Progresista v. HEW, [1974-1976 Transfer Binder] Pov. L. Rep. (CCH) ¶ 20,335 (N.D. Cal. 1972) (stip. & settlement) (state agreed to move toward
Despite a widespread feeling that informational outreach is fundamental, surprisingly little attention has been paid to its content. Yet one's conception of the proper content of outreach publicity determines more than the facts to include. Clear thinking on the matter would bring a cluster of important issues into sharper focus. For example, what information should a potential recipient have the right to receive? At what point should the government's responsibility to inform end and the potential recipient's responsibility to inquire begin? Should publicity impassively list the facts or should it impassionately solicit participation? Individual conceptions of the proper content of outreach information also influence attitudes toward stepping up outreach efforts.

There is a continuing need for outreach publicity directed at overcoming not only ignorance and confusion but also other powerful intangible inhibitors—shame, embarrassment, and fear. Many eligible persons choose not to receive public assistance because of "the paralyzing [sic] fear of being stigmatized." Administrators charged with encouraging participation should make efforts to overcome this perception. Eliminating stigmas will be a long-term project, but program officials could begin by avoiding degrading characterizations of the program and according all inquirers and

implementing bilingual services); 45 C.F.R. § 222.28 (1976) (Social Security Act programs); id. § 903.2(g)(2)(ii) (OAA, Title III); FOOD STAMP 1976 REP., supra note 5, at 335 (extensive multilingual services required under House's proposed new Act).


Those who conceive of outreach as the mere announcement of a program's availability would likely consider that that information is already known about major assistance programs, and would therefore more likely oppose expanding outreach efforts. See, e.g., 40 Fed. Reg. 16,069 (1975) (opposition to new definition of food stamp outreach based on belief that low income families already aware of program). But others, with broader conceptions of outreach information, argue that incomplete or inaccurate information inhibits participation in many programs, and that therefore more outreach is needed. See FOOD STAMP 1976 REP., supra note 5, at 333. Even persons who have heard of a program may not realize they are eligible, or know how to obtain the benefits.

This concern was voiced repeatedly in recent congressional hearings on SSI. See note 95 supra.
participants proper courtesy and respect. The help of private organizations that have the trust of their members would go a long way toward reassuring the hesitant. So, too, would utilizing target group members as outreach workers.

Encouraging participation straddles the distinction between outreach as informing and outreach as providing access to a program. Even a simple directive to publicize implies encouragement, because the obvious purpose is to draw eligible persons into the program. And directives to encourage, facilitate, or insure participation edge into requirements of active encouragement, which might with useful generality be called "facilitating access."

2. Outreach as Facilitating Access

"Facilitating access" has many dimensions. For example, it includes both providing the initial opportunity to apply for benefits and enabling participants to get to certain places (food stamp offices, meal sites, recertification centers) to receive those benefits. It includes not only making participation possible, but also making it easier. The phrase encompasses "making available," "clearing the way," and even "bringing in."

Facilitating access to a program begins with establishing the location at which to apply for and receive assistance. There should be sufficient sites located at geographically convenient places, and office hours should reasonably accommodate the demands of recipients' schedules. Inside, there should be adequate personnel to minimize delay. Long distances, long lines, and long waits are especially hard on the elderly and disabled—often the very persons the program should reach—and may deter them from partici-

168 Cf. 1975 Pub. Assistance Hearings, supra note 96, at 643 (statement of Janet Bruin, Community Org. Director, Philadelphia Corp. for Aging) (complaining of characterization of SSI as welfare rather than as right); id. at 720 (statement of Richard Hamilton, Executive Director, Nat'l Caucus on the Black Aged) (expressing fear of "invidious labeling of SSI, thereby thwarting future efforts to aid elderly poor").


170 See REP. ON NUTRITION, supra note 14, at 48.

171 Critics of early food stamp outreach attributed the low participation rates in part to the shortage and inconvenient locations of food stamp centers. See note 9 and accompanying text supra; see also REP. ON NUTRITION, supra note 14, at 55.

172 Title VII meals for the elderly, for example, must be offered at strategically located sites, such as churches, schools, and senior citizens' centers, within walking distance if possible. 42 U.S.C. § 3045e(a)(3) (Supp. V 1975).
The theme of "one-stop help" persists in outreach deliberations. Needed assistance would be more accessible if the elderly or the disabled, for example, could take care of all their public assistance business at one office, preferably the least stigmatizing place. Although some offices now administer more than one program, a crippled widow might still be shuffled from a Social Security office to a state rehabilitation center to a food stamp office, to wait in line at each. One way to avoid this run-around is by "outstationing"—for example, placing state social workers in or near social security offices. Alternatively, one agency could assume some of the preliminary functions of a sister agency. In fact, one program can perform outreach for another in at least four ways:

1) cross-information;
2) cross-referral;
3) cross-application (or joint opportunity to apply);


175 Social Security offices, for example, administer Social Security retirement and disability benefits, and SSI. State welfare offices may handle AFDC, food stamps, and state general assistance programs.

176 See 1975 Pub. Assistance Hearings, supra note 96, at 547 (statement of Jean Janover, Citizens' Comm. on Aging of the Community Council of Greater New York) (recommending outstationing); id. at 618 (statement of Fernande R. Vandenberg Duffy, Legislative Coordinator, SSI Advocacy Center) (recommending outstationing); SSI Oversight Hearings, supra note 92, at 135-36, 149-50 (Study Group report).

177 See notes 135-38 and accompanying text supra.

178 See, e.g., 42 U.S.C. § 1382d(a) (Supp. V 1975) (referral of disabled SSI applicants to state vocational rehabilitation agencies); id. § 3045e(a)(6) (referral from meal sites, Title III, OAA); 20 C.F.R. § 416.230(c) (1976) (referral of SSI applicants to other programs for which they may qualify); 45 C.F.R. § 222.41 (1976) (I & R from Social Security offices); notes 84-85 and accompanying text supra (I & R in OAA Title III programs). See also SSI Oversight Hearings, supra note 92, at 131-37 (Study Group report).

4) automatic eligibility.\textsuperscript{180}

This list runs the gamut of outreach categories, from providing information through encouraging and facilitating access to insuring participation, and attests to the richness of one-stop help as an outreach resource.\textsuperscript{181}

Even with one-stop help, however, many persons would find it difficult to get to the one-stop site. In such cases, the agency should provide—or arrange for some private organization to provide—transportation.\textsuperscript{182} Tyson advocates this service\textsuperscript{183} as do the Older Americans Act and regulations promulgated under it.\textsuperscript{184} The regulations also provide for personal escort services that "assist individuals who . . . are unable to use conventional means of transportation to reach needed services, or require such assistance for reasons of personal security or protection."\textsuperscript{185}

Where the people cannot come to the program, effective outreach may require the program to go to the people. Some programs do this already. Connecticut's food stamp program provides for circuit riders who conduct interviews in outlying areas; the Tyson court applauded this activity and urged its continuation.\textsuperscript{186} Tyson also indicated that telephone and home interviews should be substituted for office visits under a wide range of circumstances.\textsuperscript{187} Acknowledging a similar need, Title VII of the Older Americans Act authorizes delivery of meals to the home-bound elderly.\textsuperscript{188} Wider dispersion of application forms to private organizations as well as public agencies would also help carry programs to the eligible.

Transportation, escort, and circuit riders carry outreach far beyond the mere provision of information.\textsuperscript{189} Should the law re-


\textsuperscript{181} See generally Kamerman & Kahn, supra note 121, at 435-99.

\textsuperscript{182} For a general discussion of the transportation problems of the elderly and the need for a governmental response, see Transportation: Improving Mobility for Older Americans: Hearings Before the House Subcomm. on Federal, State and Community Services of the House Select Comm. on Aging, 94th Cong., 2d Sess. (1976). See also Devs. in Aging 1975-1976, supra note 59, pt. 1, at 46-48, 127-38; id., pt. 2, at 239-44.

\textsuperscript{183} 390 F. Supp. at 574.


\textsuperscript{185} 45 C.F.R. § 903.2(g)(5)(ii) (1976).

\textsuperscript{186} See 390 F. Supp. at 559, 574.

\textsuperscript{187} Id. at 574.

\textsuperscript{188} 45 C.F.R. § 909.41 (1976).

\textsuperscript{189} Under the banner of "facilitating access" an agency could go even farther to pro-
quire this "highways and byways" brand of outreach? Those who answer "no" may have any of several reasons for believing that the line should be more closely drawn. Some of these involve legitimate considerations of cost and limited administrative resources, considerations which must be balanced against outreach goals. But opponents of extensive outreach whose objections betray discomfort with the assistance programs themselves take an unfair position. Whatever the objections to a particular program, a commitment is made when the program is instituted. All who are eligible have the right to participate—they are, in fact, entitled to benefits. Thus, even against considerations of limited resources the weight of both need and entitlement pulls the line toward more extensive outreach than most programs currently offer.

B. Measuring Outreach

As outreach provisions become more common in public assistance programs, the need increases for some yardstick with which to measure outreach performance. The possibility of more lawsuits, in the vein of Bennett and Tyson, challenging administrative compliance with a specific outreach mandate particularly emphasizes this need. How does a court determine whether a given outreach program complies with its mandate? When have administrators "reached out" far enough? The relevant cases con-
tribute little systematic analysis for answering these questions.\textsuperscript{194} It may, however, be helpful to distinguish two general measures: “appropriate particular means” and “potential eligibles participating.”\textsuperscript{195}

The language of most outreach mandates suggests the first approach. Phrases such as “seek out,”\textsuperscript{196} “inform,”\textsuperscript{197} “encourage,”\textsuperscript{198} “facilitate,”\textsuperscript{199} “assist,”\textsuperscript{200} and even “make every effort”\textsuperscript{201} suggest a measure that focuses on administrative activity. Other phrasing, however, sounds more result-oriented: “insure the participation,”\textsuperscript{202} “assure that . . . individuals participate.”\textsuperscript{203} Looking solely at the language, compliance with this latter mandate should be measured against the intended result of outreach activities: participation by the eligible.

The “appropriate particular means” measure focuses on what administrators have and have not done. A court might, for example, begin by reviewing the agency’s general plan. Relevant factors would include the personnel assigned to outreach, amount of money budgeted, timetables for implementing the plan, targeting of special groups, provision for evaluating and revising the plan, and arrangements for coordinating outreach activities between administrative levels and among geographic and political subdivisions. A court measuring outreach performance would then look from the plan to its implementation and evaluate the specific ac-

\begin{footnotesize}
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\item See, e.g., id. In some programs the federal agency may be responsible for conducting primary outreach activities itself.
\item A third basis for evaluating outreach performance might be “good faith of the administrators.” Like the first, this measure focuses on the administrators’ actions rather than results. The defendants in Woodruff made a good faith defense to attacks upon their outreach program. 399 F. Supp. at 1011.
\item 45 C.F.R. § 903.2(g)(5)(i) (1976).
\item Id. § 3022(3)(A).
\item Id. § 3022(1)(C) (“assist . . . to use the facilities and services available”); id. § 3024(c)(3) (“assists . . . to take advantage”); 45 C.F.R. § 903.79(b) (1976) (“assist . . . to become aware . . . and . . . assist . . . in having access”).
\item 45 C.F.R. § 909.42(a) (1976) (“assure that the maximum number of the hard-to-reach target group eligible individuals participate”). Note that this regulation expands the statutory outreach mandate for Title VII nutrition programs for the elderly. The statute requires states to “assure that the maximum number of eligible individuals may have an opportunity to participate.” 42 U.S.C. § 3045e(a)(4) (Supp. V 1975) (emphasis added).
\end{enumerate}
\end{footnotesize}
tivities undertaken. It might even consider indirect indications of outreach activity, such as the amount of money spent.⁵⁴

One difficulty with the "appropriate particular means" test is that it presupposes a standard with which outreach performance can be compared. If the law specifies the activities that an agency must undertake or include in its formal outreach plan, or suggests a sample form for that plan, the court has a ready-made yardstick; otherwise the court must set its own gauge. For example, the food stamp outreach provision does not require x number of minutes of radio spots or y number of contacts with private organizations; the court in *Tyson* had to supply its own criteria of adequacy on these matters.⁵⁵ That courts must apply their own concept of an "adequate outreach effort" is not a devastating criticism of this first measure of outreach performance. It illustrates, after all, a common form of judicial labor. Judges must realize, however, that use of this measure requires them to become practical empiricists, with some knowledge of the effectiveness of particular outreach activities.

The "potential eligibles participating" standard measures outreach performance by looking directly at results—specifically, the percentage of the eligible population participating in the program.¹⁰⁸ Plaintiffs relied on this measure in *Woodruff v. Lavine*, a 1976 class action involving a multi-pronged attack on New York City's implementation of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program for Medicaid-eligible children.¹¹⁰ In that program, the federal government required outreach to inform eligible persons about the service and to "en-

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⁵⁵ Sometimes, however, the court must look behind the standard provided. The *Tyson* court, for example, declined to apply the outreach regulations issued by FNS, commenting that "[c]ourts need not defer to an administrative construction of a statute where there are 'compelling indications that it is wrong.'" 390 F. Supp. at 551 (quoting Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969)).
⁵⁶ 390 F. Supp. at 555-57.
⁵⁷ Id.
⁵⁸ Critics of food stamp outreach used this yardstick when they compared the number of food stamp recipients in an area to the number of persons who had participated in the commodity distribution program prior to the switchover to food stamps. See, e.g., Steiner, supra note 7, at 214-15. Critics of SSI outreach take the same approach when they base their criticism on the estimated two million eligible persons who have not been recruited for SSI. See note 105 and accompanying text supra.
Plaintiffs claimed that "since only ten to fourteen per cent of the eligible population ha[d] enrolled in the program, . . . the defendants [were] in substantial violation of the federal statute and regulations." But District Judge Weinfeld specifically refused to adopt a participation-rate measure. In an opinion that offers helpful analysis of the measure issue, he stated that "[t]he test of compliance is not the proportion of the eligible population that participates in the program, but whether the State and City have taken and are taking 'aggressive steps.'"

The Woodruff court was wise to sidetrack the plaintiffs' participation rate measure, for such an approach encounters at least two major obstacles. First, it rests precariously on the availability, reliability, and pertinence of statistics. Estimating the size of a program's eligible population presents a formidable and perhaps insurmountable task. Second, this approach naively assumes that ineligibility and defective outreach exhaust the reasons for nonparticipation in an assistance program. Yet many eligible persons will decline participation despite aggressive and persuasive outreach, held back by pride, stubbornness, lack of need, or unwillingness to bother. One hundred percent participation may be a laudable administrative goal, but it is an unreasonable judicial measure.

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211 417 F. Supp. at 827.
212 Id. at 826.
213 Id. at 837.
214 The number of persons eligible for food stamps, for example, fluctuates significantly from month to month with changing food prices and unemployment rates. See Food Stamp 1976 Rep., supra note 5, at 26, 29. See generally Rep. on Nutrition, supra note 14, at 10-11, 21-24 (food stamp universe). For some programs the necessary data may simply not exist. SSI illustrates this difficulty: SSA has abandoned its own estimate of the SSI universe, and now admits that an accurate estimate is a long way off, if possible at all. See note 105 supra.

In addition, statistics can be manipulated. The Tyson court warned against dependence on statistical estimates, observing that each side in that case had managed to adjust the same kinds of statistics to further its own argument. 390 F. Supp. at 553 n.7, 554 n.9. See also Woodruff v. Lavine, 417 F. Supp. 824, 828-29 (S.D.N.Y. 1976) (struggle of New York City welfare administrators to identify EPSDT universe).
215 An eligible person might reasonably decline to participate because he stands to gain only a few dollars from the program. Yet he would be part of the estimated universe.
216 One hundred percent participation may even be an unrealistic administrative goal. See 122 Cong. Rec. 55,241 (daily ed. Apr. 8, 1976) (statement of Senator Humphrey) ("no agency can 'insure participation'"). The court in Woodruff noted that EPSDT "is voluntary; intended beneficiaries cannot be compelled to participate. A carrot may be offered but a stick may not be used. Despite the best efforts of administrators to popularize such a program, it will still meet with resistance or indifference . . . ." 417 F. Supp. at 827.

Since 1975, the federal food stamp regulations have qualified the "insure" component
In *Woodruff*, the court rejected the testimony of plaintiffs' experts that 80-85% participation would constitute success for the program. Such a discounted goal would be arbitrary, and, as the court in *Woodruff* concluded, "cannot by itself serve to gauge . . . performance."  

On the surface, both the Bennett and Tyson courts appear to have used this second measure of outreach performance. However, closer analysis reveals that Bennett held the defendants liable for failing under the first measure. Judge Lord emphasized participation rates only to dramatize the need for outreach, apparently reasoning that if the full participation test is not met, the "appropriate particular means" standard applies. The confusion between these two measures is especially misleading in Tyson. Judge Blumenfeld spoke so emphatically of insuring participation and the statutory goal of "full participation" that he contributed to the mistaken belief that anything less than full participation violates the statutory outreach mandate. Congressional efforts to "soften" the food stamp outreach mandate may represent, at least in part, a reaction to this misinterpretation. But such a reading of Tyson overlooks that opinion's careful reservation that "perfection is not called for. The statute requires the state to do what can be done. The controlling words in the statute are 'effective of the mandate to require efforts to "insure the participation of eligible households which wish to participate."' 7 C.F.R. § 271.1(k) (1977) (emphasis added).  


218 Id. at 827. Despite its drawbacks, the participation rate measure continues to be used. The stipulation for dismissal in Westside Mothers Welfare Rights Org. v. Butz, [1977] Pov. L. Rep. ¶ 22,975 (W.D. Mich. 1976) (stip. & order), provided that the state's compliance with the statutory outreach mandate "is properly measured only by the actual effectiveness of State Food Stamp outreach activities." Stipulation for Dismissal at 1.  


220 The court stated that "deficiencies in outreach efforts and outreach plans would be immaterial if, during [fiscal year 1973], the purposes of the Food Stamp Act had been adequately met without expenditure of the surplus funds. However, the data presented to the Court indicate that food stamp participation in fiscal 1973 was essentially static and that the needs of millions of persons remained unmet." 386 F. Supp. at 1067-68. The result is a two-step test: First, determine whether the goal of outreach has been achieved. If so, the defendants' actions are "immaterial." If not, determine whether the defendants' actions have been adequate.  

221 See, e.g., 390 F. Supp. at 551, 552, 557-59, 574.  

222 See, e.g., id. at 550, 552, 557, 574.  

223 See, e.g., FOOD STAMP 1976 REP., supra note 5, at 335 (committee report), 630 (dissenting views); 122 CONG. REC. S5,241 (daily ed. Apr. 8, 1976) (statement of Senator Humphrey); id. at S5,245 (statement of Senator McGovern).  

224 See notes 58-66 and accompanying text supra.
By noting that the complete mandate does not read "insure the participation" but rather "undertake effective action . . . [to] insure the participation," the court made a subtle shift from the second measure to the first.\textsuperscript{226} Neither the Bennett nor the Tyson court clearly differentiated between these two measures. What they did establish is that low participation rates, coupled with administrative foot-dragging, violate the Food Stamp Act's outreach directive.

These distinctions only begin to sketch an outline for evaluating outreach. Future developments will undoubtedly necessitate more thorough and systematic treatment. Hopefully the "law of outreach" will crystallize in a form that holds administrators to high standards—requiring "vigilant," "aggressive," and "constant" efforts\textsuperscript{227}—but holds them liable only for their own actions or inaction, and not for results beyond their control.\textsuperscript{228}

CONCLUSION

This Note has surveyed the current role of outreach in certain major federally funded public assistance programs, beginning with the evolution of the "granddaddy" food stamp outreach provision. Although Congress, courts, and commentators have recently focused attention on the subject, important questions as to the scope of outreach and the proper measure of outreach performance remain unanswered. Indeed, in the wide field of outreach, much remains to be organized before even the questions are clear. There will be fundamental, even philosophical, questions about the obligation of government to fully inform persons of their right to legislated assistance, about the extent to which government must remove obstacles to the participation of persons eligible for these programs, and about the commitment with which we intend to reach out to the needy.

Mary Harter

\textsuperscript{225} 390 F. Supp. at 559-60.

\textsuperscript{226} See id. at 559. The distinction rests on interpreting the word "effective" to mean "tending to produce the desired result." If "effective" was construed instead to mean "producing the desired result," a plausible alternative definition of the word, then the proper measure of compliance would be the resulting level of participation. But that interpretation makes the words "undertake effective action" superfluous, violating the principle of statutory construction that attributes meaning to every phrase.

\textsuperscript{227} Woodruff v. Lavine, 417 F. Supp. at 837.

\textsuperscript{228} This discussion has assumed a judicial context. In other contexts—e.g., for administrators evaluating their own efforts—result-oriented measures would be valuable.