

Lawyer Helps States See the Loopholes in Welfare Law

By DANA MILBANK

Staff Reporter of THE WALL STREET JOURNAL
 RALEIGH, N.C. — Mark Greenberg alights at the airport here lugging a big briefcase that looks like an old-fashioned doctor's bag. That's appropriate, for in the bag are the tools Mr. Greenberg hopes state officials will use to cut the heart out of the new federal welfare law.

Mr. Greenberg, a Washington lawyer with the liberal Center for Law and Social Policy, has found ways to dilute what many of the law's supporters would call its central tenets: a five-year lifetime limit on benefits, a maximum of two consecutive years on public assistance without work, and cuts in federal aid unless certain work-participation rates are reached in a state's caseload.

Mr. Greenberg, who has been making house calls across the land spreading the word about welfare dodges, isn't a solo practitioner. People on both sides of the welfare debate are finding that the supposedly airtight welfare law is more like a fishnet.

Some accuse Mr. Greenberg of using ruses or accounting gimmickry. His strategy, says Mickey Kaus, author of a book on poverty policy and a backer of the new law, "is to eviscerate as many requirements in the bill as he can."

Making It More Humane

But Mr. Greenberg says he's just making a bad law slightly more humane. "These are ways a state can effectuate policies it wants to follow despite the requirements of the federal structure," the bearded, bespectacled, Harvard-trained lawyer says in his lawyerly way.

A number of states — including Alabama, North Carolina, Massachusetts and Vermont — say they are considering Mr. Greenberg's techniques to keep some recipients on public assistance longer or to continue benefits or programs that would otherwise be terminated under the new law.

Mr. Greenberg's ideas won't gut the welfare law (it still makes big cuts in aid and gives states the freedom to do the same), but they provide hope for its opponents — and headaches for those who wrote it. Republicans in Congress have been keeping a close watch on the proliferation of what they call "Greenbergisms." Says one senior Ways and Means staffer: "He does have a fertile mind for dreaming up ways around this thing."

At a Children's Defense Fund conference yesterday, Mr. Greenberg led a workshop on his lemons-to-lemonade theme, which indicates a change in attitude among the law's sworn enemies. Wendell Primus, who resigned in protest from the Clinton administration last August, says he remains as opposed as ever to the law, but adds: "I wasn't quite aware of all the loopholes or the ways a state could soften the blows."

Mr. Greenberg, a cerebral man who looks a bit disheveled in a tweed jacket or frayed cotton suit and rubber-soled dress shoes, has crisscrossed the country delivering his message to state officials and legislators, from California to Georgia. The 43-year-old former Legal-Aid lawyer has a reputation for fairness that wins him audiences even with conservatives.

Some of the loopholes he peddles are gaping. The requirement that welfare recipients find "work" within two years, for example, allows states to define work however they please — one hour of basket-weaving each year would do — and there aren't any penalties for missing the target. (The Department of Health and Human Services acknowledges it hasn't any power to enforce this provision but says most states are taking the requirement seriously, anyway.) As for the five-year lifetime limit, Mr. Greenberg notes that programs financed exclusively by a state aren't covered. Therefore, if a state uses funds already committed to public assistance — which average about 45% of total welfare spending — for a separate program of its own devising, it can exempt almost half its caseload without increasing spending. On top of that is a 20% exemption the law allows for hardship cases.

A state can further avoid time limits and work requirements by cutting off a parent — but continuing to fund the recipient's children. The law also exempts victims of domestic violence from its provisions. "If a state doesn't want the time limit to run, it has substantial ability to do that," Mr. Greenberg says.

Splitting caseloads between a state's solely funded program and a federally funded one also can undermine requirements that states put half their welfare caseloads to work within a few years. This requirement, unlike the two-year work requirement, comes with a strict definition of work. But because the requirement doesn't apply to a state-funded program, a state can, by creating two separate programs of similar size, reduce the 50% requirement to as little as 25%.

Broader Definition Found

Mr. Greenberg also advocates taking advantage of a vague passage in the law that allows 20% of certain recipients to be in vocational education. Most everyone agrees this was meant to be 20% of those required to work, not 20% of the entire caseload, but Mr. Greenberg, by encouraging the broader definition, allows states to put more people in training and fewer to work.

Of course, the loopholes are only useful if states are inclined to be generous. It isn't clear what states will do, because only a few have put plans through their legislatures, but Mr. Greenberg's tour is already



Mark Greenberg

having an effect. Alabama officials, for example, have met with him twice recently, and the state, which isn't known for its liberal tendencies, is planning to use at least two Greenbergisms:

Alabama will reclassify all cases where children are being raised by a grandmother or other non-parental relative as "child-only," keeping benefits for the children while removing 10,000 of the state's 37,000 cases from work requirements and time limits. And splitting the caseload to have a separate state program will come "inevitably," says Joel Sanders, Alabama's welfare-reform director. Alabama has pockets of high unemployment,

and "dropping people in those counties would be cruel," Mr. Sanders says.

Within an hour of his arrival in Raleigh, Mr. Greenberg is at a table surrounded by 10 state welfare officials, his tattered copy of the law before him. He makes his case for splitting the caseload. "If you separate state and federal programs, many of the federal prohibitions don't apply to the state money," he says. One of the officials breaks in. "What I'm hearing you say is, statutorily, they can't do anything about it."

Mr. Greenberg responds: "They plainly don't have the authority. . . . It becomes impossible to apply the participation rates."

Someone else notes that splitting the programs might be considered "a shell game," but Mr. Greenberg says he's only expanding the state's options. "Figure out what you want to do in policy and recognize the freedom is there." Over the next 24 hours, he delivers a similar message to a group of North Carolina antipoverty activists and a conference of county welfare officials.

'Unrealistic' Requirements

Peter Leousis, North Carolina's assistant secretary of human resources, says he hopes the state can follow the law without using Mr. Greenberg's suggestions, but he won't rule them out. "A lot of times a state will have to do some of those because the work requirements are unrealistic," he says. "It's better for us not to do that, but if you have to, that's different."

Mr. Leousis, who met Mr. Greenberg at the airport, is clearly taking Mr. Greenberg's ideas seriously. "It will help states in dealing with this humanely," he says of the Greenbergisms. "We don't want this to become something where the states just kick people off welfare."

THE WALL STREET JOURNAL

FRIDAY, MARCH 14, 1997

Bruce
Dennis
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Debbie

To: Barbara Woolley, Deputy Director, Office for Women's Initiatives and Outreach,
Fax: 456-6218
From: Joan Entmacher, Women's Legal Defense Fund
Re: Child Support and Welfare
Date: June 17, 1996

WR ~~WR~~
Opponents
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1. Child Support Reform: It Isn't Just a Welfare Issue

So far, the Administration has proposed child support reform as part of welfare reform. There are connections between the two issues; child support can help women get off and/or stay off welfare. However, child support reform is much more than a welfare issue. More than half of the caseload of state child child support enforcement agencies consists of non-AFDC cases. Those women desperately want a system that works, and many already feel their cases take second place to recovering welfare payments. Women don't see child support reform as only, or even primarily, a welfare issue; it shouldn't be framed that way.

The reforms proposed by the Administration, starting with the welfare bill in the 103rd Congress, would improve enforcement for all children. (These reforms include establishing new state and federal case registries, and new state and federal new hire registries; requiring states to centralize the collection and disbursement of child support; requiring greater use of income withholding and other proven collection techniques such as license suspension and administrative liens; requiring states to adopt uniform rules for interstate enforcement; and simplifying the establishment of paternity). These measures have broad bipartisan support. A separate child support bill, H.R. 3465, has been introduced; a message from the Administration that Congress should move on child support, and not hold it hostage to debates over welfare and Medicaid, would be welcomed by women.

2. Child Support Reform as a Welfare Issue: Don't Blame Mothers for Nonpayment of Child Support!

Child support enforcement is one of the few areas in welfare reform which emphasizes the responsibility of absent male parents. Women at all income levels have experienced problems collecting child support. A message that says: "We need to get tough with mothers on welfare because it is their fault that fathers aren't paying child support," does not conform to the experience of women. Women will not go back to a time of an institutionalized double standard and discrimination against children born out of wedlock.

3. Improving Child Support Enforcement in Welfare Cases: Non-Cooperation is not the Problem

Since 1975, mothers applying for AFDC have been required to cooperate in child support enforcement, unless they have good cause not to (good cause is defined to include domestic violence, or the conception of a child as a result of rape or incest). Welfare agencies are responsible for determining whether or not a mother is cooperating with child support enforcement, and in most states welfare agencies do the initial child support enforcement interview.

This system has not worked well. However, the GAO, academic researchers, and child support agency directors agree that the problem is with the system, not with uncooperative mothers. In many cases, the welfare office does a poor job interviewing clients; it has other priorities, and often does not know what the child support agency needs. Even if the information is collected, it may not get to the child support agency; the GAO found that one in six cases simply fell through the cracks. And, even if it gets there, the information may not be used in a timely way. Many states have greatly increased their establishment of paternity and support -- without imposing new requirements or tougher sanctions on mothers -- through systemic reform: providing welfare workers with better training on child support enforcement, the appropriate forms, and a linked computer system, or co-locating child support and welfare agencies, so a child support worker can do the intake interview.

Unfortunately, pending welfare reform proposals focus on tougher enforcement of cooperation requirements, not systemic reform. They would give child support agencies the responsibility for determining cooperation, and would allow states to define cooperation and good cause. Some states are already experimenting in these areas -- with or without waivers -- and some of the potential problems are becoming apparent. Endorsing "get tough" proposals, and encouraging states to move forward prematurely, would put many women and children at risk.

4. Having Child Support Agencies Determine Cooperation: The Problem of Domestic Violence Must Be Addressed

Most child support workers, by inclination, training, and job description, are not social workers. They don't work with families in a holistic way; they collect money (or try to). Most freely admit that they know very little about domestic violence, and don't want the responsibility for dealing with it. Unfortunately, if they have responsibility for determining cooperation, the responsibility will be unavoidable. Even if the responsibility for determining "good cause" for non-cooperation is given to welfare agencies, child support agencies will have to know what the good cause exception is, inform all applicants about it, and be knowledgeable enough about domestic violence, and the signs of abuse, to be able to identify and refer cases when a woman has not raised the issue herself, but might have good grounds to do so.

A recent case in Maryland highlights the problem. A woman applied for AFDC benefits for her new baby. She had left the baby's father because of his many acts of violence toward her and her other children (which was under investigation by Child Protective Services). She was not told about the "good cause" exception, but was simply told that to get benefits, she had to give the father's name. She did. She had had no contact with the father for about a year, but after he received notice of the hearing, he started driving by her house and threatening her. She called to report it to the agency, and to ask if she could be excused; she was told that nothing could be done, and that if she failed to appear, she would be arrested. She only learned about the "good cause" exception when she contacted the "Legal Forms Helpline" of the Family Law Center of Maryland; followup calls by an attorney at the Center confirmed that ignorance of the exception and the process for claiming it was widespread.

5. Having States Define Cooperation: Don't Punish Women Who Are Cooperating, but Cannot Provide the Information Required.

As discussed in paragraph 3, the way many states interview women to get information about child support is seriously inadequate. They fail to ask specific questions, and if women cannot provide the information at the time, they fail to follow up. Women who do call with additional information find it hard to get through, or learn later that the information failed to get into the file. States should try to get more specific information than they do now. The problem is that some states have decided to make providing specific information an absolute requirement, and sanction women who are cooperating, but are unable to provide the information.

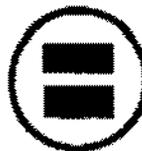
Massachusetts adopted a law which required all persons seeking public assistance (including recipients who had qualified under its old law) to provide the name and social security number of the putative father, or two other pieces of information from a limited list. The law required that the information be verifiable; thus, providing last known address or last known employer was insufficient. Lack of knowledge was no excuse. About 1,800 families had their benefits reduced under the policy, including women who had made extensive efforts of their own to locate the father, and women who had provided the father's address and employer when they first applied for AFDC, but which the state had not used. A preliminary injunction against the policy was issued by a Superior Court Judge in Massachusetts, who ruled that it discriminated against women and non-marital children, and violated due process because there was no rational basis for sanctioning women who are cooperating, but who cannot provide the information. Even Governor William Weld conceded that in applying the law to women whose children were born before the law took effect, the state may have made a mistake; litigation continues over its application in the future.

Virginia requires all women, except in documented cases of rape, to name the father of the child. Victims of domestic violence must provide the father's full name; however, if they succeed in establishing good cause, they need not provide the additional information which other women must provide to qualify. Even if the State believes a woman's statement that she does not have the required information, she will be sanctioned. Initially, only her share of the grant will be cut; after six months, the entire family will lose AFDC. Virginia applies its policy to children born years before; one of the plaintiffs in the lawsuit challenging the Virginia policy had her child 13 years ago, and applied for AFDC in 1994 when she had to leave work because of a disability.

Virginia's insistence that battered women name the father is a serious problem. Even without her further cooperation, the state may attempt to proceed on its own. This is a risk that will discourage many victims of domestic violence from seeking assistance they need to survive on their own -- or put them at risk if they do.

I would be happy to provide additional information.

WR-Opponents



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March 7, 1996

The President
The White House
1600 Pennsylvania Avenue
Washington, DC 20510

*Received in
open form
Analysis
3/15/96*

Dear Mr. President:

I am writing to express the grave concern of the National Urban League movement about the apparent direction of recent discussions in Washington about how the A.F.D.C. program should be reformed. It would appear from press accounts of negotiations and of testimony the other day by Secretary Donna Shalala that time limits on the receipt of benefits may well be imposed and that there would be no federal assurance of income support or employment for welfare parents once their benefits expire.

Our alarm about the prospect that this could become federal policy is underscored by three items I have read in just the past week. They are:

- 1) The account in *The Washington Post* on Tuesday, February 27 about the likely impact of welfare changes and social service cuts on one community. As the newspaper reported, "At a minimum, social service providers said, the cuts would bring a marked increase in the number of homeless men and women begging for spare change and mentally ill adults wandering through shopping centers and other public places." The community at risk is Fairfax County, one of the wealthiest in the nation.
- 2) The series this week in *The New York Times* on the devastating impact of corporate downsizing on communities and families. The story in Wednesday's paper documents how

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Dayton, Ohio has been ravaged by the changes. Piling the kinds of problems alluded to in *The Washington Post* article onto the Daytons of this country, which have exponentially more welfare recipients than Fairfax County, will further devastate the economies and quality of life of America's struggling cities.

3) A study co-authored by Virginia L. Carlson of the University of Wisconsin-Milwaukee and, I am proud to say, Nicholas C. Theodore of the Chicago Urban League, entitled: "Are There Enough Jobs? Welfare Reform and Labor Market Reality." In their study of labor market conditions in Illinois, the authors found that:

- There are four workers in need of entry-level jobs for every job opening in the state.
- The gap between entry-level job seekers and available jobs is even larger in cities, namely six workers for every slot in Chicago and nine workers for every job in East St. Louis.

This means that substantial numbers of parents cast off of welfare due to time limits simply will not be able to find work in Illinois, and presumably elsewhere. A study commissioned by the Maryland Department of Human Resources documented the same dilemma in that state. As the *Post* reported on the findings of the study, "How do you get more than 79,000 people off the dole and into the workplace when you have fewer than 5,700 jobs to offer them?"

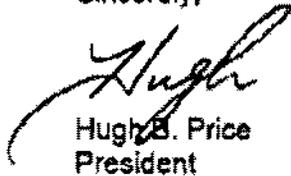
A few governors who have faced up to this stark reality, such as John Engler of Michigan and Howard Dean of Vermont, have decided that they must graft public employment programs onto the time limits so that mothers, who are forced off of welfare and cannot subsequently find jobs, aren't forced to fend with their children for themselves alongside the mentally ill and homeless on the streets of our cities. We urge you not to subject the fate of these vulnerable American citizens to the vicissitudes of state policy or compassion. The impact on them and on cities of pernicious and unenlightened state and local policies could be horrific.

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When David Ellwood originally advanced the idea of ending welfare as we know it, he called for time limits coupled with guaranteed public jobs (to replace the welfare entitlement) for former welfare recipients who could not find private employment. We implore you to insist that any welfare reform emerging from Congress embody these twin principles. Accepting the former without the latter would place poor people and the cities they inhabit at unconsonable risk.

Thank you so very much for your consideration of our views.

Sincerely,



Hugh B. Price
President