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tract terms.⁴⁰ These union practices are not to be condemned; they may in fact be quite necessary. The legal implications of this practice, however, may lead the courts to conclude that it presents too great a threat to good faith bargaining and to the certified bargaining units to be sustained.

Union insistence upon employer acceptance of a coalition bargaining committee therefore is not always protected by section 7 of the Act contrary to the Board's implication in *General Electric*. The detrimental effect of this practice on the requirement of good faith bargaining may have justified the employer's refusal to negotiate with that committee. This conclusion, however, does not preclude the employer's consent to the union's including "outsiders" on its committee. The propriety of such consent has been recognized by the courts;⁴¹ co-ordinated bargaining is not illegal per se. Its use, however, should properly be limited to those situations involving no threat to good faith bargaining.⁴²

RICKY LEE WELBORN

Municipal Corporations—Constitutional Law—Eviction From Public Housing Projects

Public housing in the United States originated in the 1930's as part of the larger effort to escape from the clutches of the Great Depression. The Wagner-Steagall Act of 1937¹ signaled the entry of the federal government into the field of housing and, although amended many times, remains in force today with its basic design still largely intact. Today, more than one out of every one hundred persons in the United States lives in federally assisted, low-rent public housing.²

⁴⁰ *Id.* According to Mr. Hilderbrand, taking wages out of competition among unions is the most sought after goal of the unions.

⁴¹ *Cf.* *NLRB v. John J. Corbett Press, Inc.*, 401 F.2d 673 (2d Cir. 1968); *NLRB v. Sheridan Creations, Inc.*, 357 F.2d 245 (2d Cir. 1966).

⁴² It should be noted that employers may join together in multi-employer associations for the purpose of collective bargaining, if done in good faith and with the consent of the union, with each party retaining the right to withdraw from this bargaining arrangement upon reasonable notice. *See* *NLRB v. Truck Drivers, Local 449*, 353 U.S. 87 (1957); *Publishers' Ass'n of New York City v. NLRB*, 364 F.2d 293 (2d Cir.), *cert. denied*, 385 U.S. 971 (1966); *Pacific Coast Ass'n of Pulp & Paper Mfrs.*, 163 N.L.R.B. No. 129 (1967); *Retail Associates, Inc.*, 120 N.L.R.B. 388 (1958).

¹ 50 Stat. 888 (1937), *as amended*, 42 U.S.C. §§ 1401-30 (1964), *as amended*, 42 U.S.C. §§ 1402-21a (Supp. III, 1968).

² *Rosen, Tenants' Rights in Public Housing*, in *HOUSING FOR THE POOR: RIGHTS*

Although reformers had long urged public intervention to alleviate the deplorable conditions of the slums, the Wagner-Steagall Act was motivated "not so much as a matter of radical ideology, but out of a demand for positive programs to eliminate the 'undeserved' privations of the unaccustomed poor."³ This attitude resulted from the peculiar character of the persons burdened by poverty in the thirties. In addition to the "problem poor" (the traditional uneducated, unskilled poor), there were millions of persons whose style of living was reduced to the poverty level by the Depression. These persons, formerly prosperous with a middle-class outlook, constituted a "submerged middle class,"⁴ and it was this group who initially benefitted from subsidized public housing.

The projects were for poor but honest workers—the members of the submerged middle class, biding their time until the day when they regained their rightful income level. The tenants were not to receive any "charity." The difference between a dole and a subsidy is psychologically powerful, whether or not the distinction is good economics. The working class residents of public housing were not to receive a gift from the government, but their rightful due as citizens. Public housing, arguably, was no more "charitable" than the free land of the Homestead Act of 1862—an earlier form of middle-class subsidy. Decent, sanitary apartments were a stepping-stone to a fee simple cottage—the American dream. Perhaps a radical fringe of housing reformers looked on public housing as something more fundamentally "public"; but the core of support lay in an old and conservative tradition.⁵

Public housing activities were suspended during World War II. The return of prosperity ended the phenomenon of a submerged middle-class and consequently the demand for low-rent public housing by these persons.⁶ "Public housing . . . was relegated to the permanent poor in the city, and to the new urban immigrants. . . . [P]ublic housing was exclusively for those who were certainly, indisputably, irreversibly poor."⁷

AND REMEDIES 154 n.1 (1967) [hereinafter cited as Rosen]; see generally Friedman, *Public Housing and the Poor: An Overview*, 54 CALIF. L. REV. 642 (1966) [hereinafter cited as Friedman].

³ Friedman 646.

⁴ *Id.*

⁵ *Id.* at 648-49.

⁶ Actually, many would have been content to remain in subsidized public housing projects. However, pressures on the government by business interests resulted in the abandonment of subsidized apartments for homes in the suburbs. *Id.* at 651.

⁷ *Id.*

The texture of life in the projects changed for the worse; since more delinquent families lived in them, they were the locus for more and more delinquency. The attention of the public was now directed to public housing not

Influx of the "problem poor" has altered the whole complexion of public housing. The location in a public housing project of a poverty-stricken family, with a history of substandard living spanning several generations, cannot be expected to transform its members into a respectable household with middle-class standards, values, outlooks and all the implications thereof. Consequently, public housing administrators have become more and more rigid and paternalistic in their attitudes toward tenants.

As problems with tenants have multiplied, public housing officials have become increasingly authoritarian in their approach. Tenants are bound by complex regulations, much more stringent than those imposed by private landlords. Admission and continued occupancy standards are used as weapons for inculcating middle-class standards, and as shields for protecting the image of the program.⁸

Public housing tenants have had little opportunity to challenge the inevitable injustices resulting from these attitudes. However, with the recent explosion of legal services for the poor, public landlords can no longer remain secure in the belief that their actions will continue to go unchallenged.

One of the most onerous conditions imposed on tenants of public housing projects is that they be content with short-term leases, almost always providing for a month-to-month tenancy. By virtue of these lease terms, housing authorities have contended that they may terminate the lease of any tenant merely by giving the requisite notice to quit and that they are under no duty to give any reason for the eviction.⁹ In *Thorpe v. Housing Authority*,¹⁰ the Supreme Court had an opportunity to decide whether a public housing authority may, consistent with due process, evict a tenant for any reason or for no reason, and whether a tenant may be

as a hopeful program of reform but as the site of public folly and private decay

Id. at 652.

⁸ Comment, *Government Housing Assistance to the Poor*, 76 YALE L.J. 508, 512 (1967). See Fortas, *Equal Rights—For Whom?*, 42 N.Y.U.L. REV. 401, 413 (1967) [hereinafter cited as Fortas]; Friedman 655-56; Rosen 156.

⁹ See Fortas 412; Friedman 660; Rosen 185 & n.67, 203-04. Public housing authority admission policies have also been attacked. See *Holmes v. New York City Housing Auth.*, 398 F.2d 262 (2d Cir. 1968); Friedman 656-59; Rosen 157-81. Also contested have been rules and regulations promulgated by the authorities, compliance with which is a condition to admission and continued occupancy. See *Lewis v. Housing Auth.*, 397 F.2d 178 (5th Cir. 1968); Rosen 224-46. Discussion of these controversial policies is beyond the scope of this note.

¹⁰ 393 U.S. 268 (1969).

evicted without being afforded an opportunity to contest the sufficiency of the authority's reason for terminating the tenancy.

Petitioner Thorpe resided in a federally assisted, low-rent public housing project owned and operated by the Housing Authority of the City of Durham, North Carolina. Petitioner's lease provided for a renewable month-to-month tenancy and also provided for termination of the tenancy by either party on fifteen days notice prior to the end of any monthly term. On August 10, 1965, petitioner was elected president of a tenants' organization, and on August 11 she was given notice that her lease would be terminated at the end of the month. No reason was given for the termination and efforts to ascertain the reason were unsuccessful.¹¹

In defending against the Housing Authority's action for summary eviction, petitioner asserted that she was being evicted for her organizational activities and that eviction for this reason would be in violation of her first amendment rights. The North Carolina state courts sustained the Housing Authority's power to evict petitioner, the supreme court stating: "It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease."¹² Subsequently, the Supreme Court granted certiorari to consider whether petitioner was denied due process.¹³ While the case was pending before the Court, the Department of Housing and Urban Affairs (hereinafter HUD) issued a circular concerning the termination of tenancies in public housing projects. The circular provided that "no tenant be given notice to vacate without being told by the Local Authority, in a private conference or other appropriate manner, the reasons for the eviction, and given an opportunity to make such reply or explanation as he may wish."¹⁴ The Supreme Court then vacated the *Thorpe* judgment and remanded to the North Carolina Supreme Court for further proceedings in light of the circular.¹⁵ The North Carolina Supreme Court reaffirmed its previous decision holding that

¹¹ *Id.* at 270-71 & nn.1, 2 & 3.

¹² *Housing Auth. v. Thorpe*, 267 N.C. 431, 433, 148 S.E.2d 290, 292 (1966) (per curiam).

¹³ *Thorpe v. Housing Auth.*, 385 U.S. 967 (1966).

¹⁴ *Thorpe v. Housing Auth.*, 393 U.S. at 272-73 n.8.

¹⁵ *Thorpe v. Housing Auth.*, 386 U.S. 670 (1967). In a concurring opinion, Justice Douglas stated: "I would vacate and remand to the state courts to determine the precise reason why petitioner was evicted and whether that reason was within the permissible range for state action against the individual." *Id.* at 681.

the circular was prospective only and thus was not applicable to the petitioner's case.¹⁶

Once again the Supreme Court granted certiorari¹⁷ and reversed the judgment, holding that "housing authorities of federally assisted public housing projects must apply the . . . HUD circular before evicting any tenant still residing in such projects. . . ."¹⁸ Specifically, the Court held that the HUD circular is mandatory;¹⁹ that the circular did not unconstitutionally impair the Housing Authority's contract with HUD nor the Authority's lease agreement with the petitioner;²⁰ and that the circular is applicable to eviction proceedings instituted prior to the issuance of the circular.²¹ Beyond these holdings, the Court's decision provides little, if any, guidance as to what types of procedure would constitute compliance with the HUD circular.²² Invoking the abstention doctrine,²³ the Court also failed to resolve any of the larger Constitutional issues concerning the applicability of due process limitations to a public housing authority's power of eviction.²⁴

That a public housing authority is an arm of the state—usually termed a municipal corporation, created for a public purpose, and invested with a government function—is virtually undisputed.²⁵ However, public housing authorities have insisted that they stand on the same footing as private landlords and thus are bound only by the terms of the lease agree-

¹⁶ *Housing Auth. v. Thorpe*, 271 N.C. 468, 471, 157 S.E.2d 147, 150 (1967).

¹⁷ *Thorpe v. Housing Auth.*, 390 U.S. 942 (1968).

¹⁸ 393 U.S. at 274.

¹⁹ *Id.* at 274-76.

²⁰ *Id.* at 277-81.

²¹ *Id.* at 281-83. The Court noted that the Housing Authority had begun to comply with the HUD circular but refused to apply it to petitioner because it had decided to evict her before the circular was issued. *Id.* at 283.

²² In fact, the Court may have inadvertently minimized the effect of the circular by quoting with apparent approval the Authority's contention that "the Circular clearly does not say that a Housing Authority cannot terminate at the end of any term without cause as is provided in the lease." *Id.* at 278.

²³ See *Ashwander v. TVA*, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring).

²⁴ 393 U.S. at 270 n.2, 284 & n.49.

These same considerations lead us to conclude that it would be . . . premature for us to reach a decision on petitioner's contention that it would violate due process for the Authority to evict her arbitrarily. That issue can be more appropriately considered if petitioner is in fact evicted arbitrarily.

Id. at 284 n.49.

²⁵ *E.g.*, *Banks v. Housing Auth.*, 120 Cal. App. 2d 1, 260 P.2d 668 (1953); *Cox v. City of Kinston*, 217 N.C. 391, 8 S.E.2d 252 (1940). *Cf.* *Shelley v. Kraemer*, 334 U.S. 1 (1948).

ments into which they enter.²⁶ The courts have generally upheld this view with the result that a public housing authority, like a private landlord, may evict a tenant for whatever reason it chooses, subject only to the provisions of the lease agreement.²⁷ It follows that where the lease does not specifically provide for termination, a public housing tenant, in possession under a month-to-month tenancy, can be evicted for any reason merely by landlord compliance with the statutory requirements for the termination of such tenancies.²⁸

In the fifties a notable exception to this general attitude grew out of the public housing authorities' attempt to comply with the Gwinn Amendment²⁹ by requiring tenants to sign a statement to the effect that they were not members of any organization designated as subversive by the Attorney General. Failure to sign such a statement would result in eviction. The courts consistently held that evictions based on such grounds were arbitrary and in violation of the tenants' constitutional rights.³⁰

²⁶ See Friedman 660-61; Rosen 184-85; Comment, *Public Landlords and Private Tenants: The Eviction of "Undesirables" from Public Housing Projects*, 77 YALE L.J. 988 (1968) [hereinafter cited as Comment, *Public Landlords and Private Tenants*]. See also Reich, *The New Property*, 73 YALE L.J. 733 (1964).

²⁷ E.g., *Brand v. Chicago Housing Auth.*, 120 F.2d 786 (7th Cir. 1941); *Housing Auth. v. Thorpe*, 267 N.C. 431, 148 S.E.2d 290 (1966) (per curiam); *Housing Auth. v. Turner*, 201 Pa. Super. 62, 191 A.2d 869 (1963). At times 42 U.S.C. § 1404a (1964), as amended (Supp. III, 1968), has been interpreted to authorize such action. E.g., *Walton v. Phoenix*, 69 Ariz. 26, 208 P.2d 309 (1949). That section provides that "any State or local public agency administering a low-rent housing project . . . shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered . . ." However, an examination of legislative history shows that the provision was included to insure that a local authority could evict a tenant who became ineligible for low-rent housing because of exceeding maximum income requirements. See 93 CONG. REC. 6044 (1947). In fact, the only ground for eviction from a public housing project mentioned specifically in the federal act is eviction for "overincome." 42 U.S.C. § 1410(g)(3) (1964), as amended (Supp. III, 1968).

²⁸ E.g., the North Carolina statute provides for termination of a month-to-month tenancy on seven days' notice prior to the end of any term. N.C. GEN. STAT. § 42-14 (1965).

²⁹ "[N]o housing unit constructed under the United States Housing Act of 1937, as amended, shall be occupied by a person who is a member of an organization designated as subversive by the Attorney General." 66 Stat. 403, reenacted 67 Stat. 307, formerly 42 U.S.C. § 1411(c) (Supp. 1953), expiring with its omission in 1955.

³⁰ *Rudder v. United States*, 226 F.2d 51 (D.C. Cir. 1955); *Housing Auth. v. Cordova*, 130 Cal. App. 2d 883, 279 P.2d 215, cert. denied, 350 U.S. 969 (1956); *Chicago Housing Auth. v. Blackman*, 4 Ill. 2d 319, 122 N.E.2d 522 (1954); *Kutcher v. Housing Auth.*, 20 N.J. 181, 119 A.2d 1 (1955); *Lawson v. Housing Auth.*, 270 Wis. 269, 70 N.W.2d 605 (1955).

The Gwinn amendment cases contain an abundance of dicta concerning limitations on the power of a public housing authority to evict a tenant for no reason or for an arbitrary reason. Perhaps the most well-known of these dicta is contained in *Rudder v. United States*³¹ where the court stated: "The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process."³² The effect of *Rudder* and similar dicta on subsequent evictions by public housing authorities is not at all clear.³³ For example, in *Holt v. Richmond Redevelopment & Housing Authority*,³⁴ the court enjoined the eviction of a public housing tenant because it found that the tenant was being evicted for his participation in establishing a tenants' organization and for being elected its president. Citing *Rudder*, the court held that eviction on such grounds would constitute an invalid infringement on the tenant's first amendment rights of freedom of speech and freedom of assembly. At the same time the court stated that a public housing tenant has no vested right in his tenancy, thus implying that any reason not constituting an infringement on constitutional rights would be sufficient for eviction.³⁵

Consequently, when faced with eviction from a public housing project, the tenant, in an attempt to ascertain his rights, must look to a vaguely-defined HUD circular and to a series of cases on the subject that are confusing and often inconsistent. Further clarification by the courts is inevitable and thus it would be useful to predict what type of clarification will be forthcoming.

Initially, it should be recognized that the public housing tenant threatened with eviction has a great deal at stake. In addition to the immeasurable emotional implications of an eviction, the tenant is faced with

³¹ 226 F.2d 51 (D.C. Cir. 1955).

³² 226 F.2d at 53. See also *Housing Auth. v. Cordova*, 130 Cal. App. 2d 883, 884, 279 P.2d 215, 216, cert. denied, 350 U.S. 969 (1956):

We believe it fairly obvious that a public body, a housing authority as here, does not possess the same freedom of action as a private landlord, who is at liberty to select his tenants as he pleases, and in the absence of a letting for a prescribed term, may terminate their tenancy either without any reason or for any reason regardless how arbitrary or unreasonable it may be.

³³ Compare *Housing Auth. v. Turner*, 201 Pa. Super. 62, 191 A.2d 869 (1963), with *Thomas v. Housing Auth.*, 282 F. Supp. 575 (E.D. Ark. 1967).

³⁴ 266 F. Supp. 397 (E.D. Va. 1966).

³⁵ *Id.* at 400-01. See *Chicago Housing Auth. v. Stewart*, — Ill. 2d —, 237 N.E.2d 463 (1968); *Lancaster Housing Auth. v. Gardner*, 211 Pa. Super. 502, 240 A.2d 566 (1968).

the task of relocating. Because of a critical housing shortage, he will often have to be satisfied with a substandard dwelling at a higher rent payment and his chances of ever being admitted to another public housing project are severely diminished.³⁶ On the other hand, it is clear that public housing authorities must have sufficient power to control their internal affairs, to maintain order, and to protect project property.³⁷ However, if the authorities impinge upon the rights and privileges of their tenants in purportedly carrying out these functions, it is incumbent upon the courts to intervene and protect these rights and privileges.³⁸

In light of recent Supreme Court decisions, it seems obvious that an eviction based on an authority's displeasure with a tenant's exercise of his constitutional rights cannot be upheld.³⁹ "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege."⁴⁰ In fact, in *Thorpe* the Court noted with approval the Housing Authority's concession that "its power to evict is limited at least to the extent it may not evict a tenant for engaging in constitutionally protected activity. . . ."⁴¹ This conclusion points up the need for affording the tenant notice and an opportunity to be heard before he can be evicted. As the Court noted in *Thorpe*: "[A] tenant would have considerable difficulty effectively defending against such an . . . illegal eviction if the Authority were under no obligation to disclose its reasons."⁴²

Assuming that a public housing authority cannot evict a tenant for engaging in constitutionally protected activity, it remains to be determined whether a public housing tenant can be evicted for any other reason or for no reason at all. At the outset, it is important to distinguish the function of a public landlord from that of a private landlord.

³⁶ Comment, *Public Landlords and Private Tenants* 990-91.

³⁷ See 42 U.S.C. § 1401 (1964).

³⁸ See Rosen 247.

³⁹ For a recent case indicating that a private landlord may, under certain circumstances, be prohibited from evicting a tenant because of his constitutionally protected activities, see *Edwards v. Habib*, 397 F.2d 687, 690-99 (D.C. Cir. 1968).

⁴⁰ *Sherbert v. Verner*, 374 U.S. 398, 404-05 & n.6 (1963). See also *Elfbrandt v. Russell*, 384 U.S. 11 (1966); *NAACP v. Button*, 371 U.S. 415 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Speiser v. Randall*, 357 U.S. 513 (1958); *NAACP v. Alabama*, 357 U.S. 449 (1958); *Slochower v. Board of Higher Educ.*, 350 U.S. 551 (1956); *Wieman v. Updegraff*, 344 U.S. 183 (1952).

⁴¹ 393 U.S. at 282-83 & n.44.

⁴² *Id.* at 283. Cf. *Silver v. New York Stock Exch.*, 373 U.S. 341, 362-63 (1963); *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 900 (1961) (Brennan, J., dissenting).

Public housing authorities do not hold housing projects for profit and so have no need for such broad freedom to terminate their relationship with project residents. The authorities' only legitimate interest in their property is in its usefulness as a tool of national and state housing policies. . . . The public landlord, in short, does not require the broad discretion of a private landlord.⁴³

Second, the old distinction between "right" and "privilege," including the notion that constitutional limitations are not applicable to the denial or revocation of a privilege,⁴⁴ has lost much of its vitality.⁴⁵ Because of the obvious parallelism between the government as employer and the government as landlord, the Court's language in *Wieman v. Updegraff*⁴⁶ is relevant. "We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory."⁴⁷ Third, the argument is often made that the lease provisions to which the public housing tenant agrees determine the rights and incidents of his tenancy; consequently, a reservation by the authority of the power to terminate on short notice is exclusively controlling. However persuasive such an argument might be in the case of a private landlord, it cannot be sustained where the landlord is an arm of the government. "[T]he state cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process."⁴⁸

In *Thorpe* the Court at least hinted at its recognition of these distinctions between public and private landlords. This hint came in the form of a footnote citing the concurring opinion of Justice Douglas in

⁴³ Comment, *Public Landlords and Private Tenants* 996-97.

⁴⁴ See generally Reich, *The New Property*, 73 YALE L.J. 733 (1964); Van Aystyne, *The Demise of the Right-Privilege Doctrine in Constitutional Law*, 81 HARV. L. REV. 1439 (1968).

⁴⁵ See, e.g., *Sherbert v. Verner*, 374 U.S. 398 (1963); *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963); *Speiser v. Randall*, 357 U.S. 513 (1958).

⁴⁶ 344 U.S. 183 (1952).

⁴⁷ *Id.* at 192.

⁴⁸ *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150, 156 (5th Cir. 1961). See *Vinson v. Greenburgh Housing Auth.*, 29 A.D.2d 338, 288 N.Y.S.2d 159 (Sup. Ct. App. Div. 1968).

[S]ince their landlord functions are incidental to the administration of national and state laws, not the converse, courts should look beyond the terms of 'leases' to the statutory standards which bind the administrator and to the constitutional standards which the government must respect whenever and through whomever it acts.

Comment, *Public Landlords and Private Tenants* 999-1000.

the Court's previous *Thorpe* decision.⁴⁹ In that opinion Justice Douglas cited with approval the *Rudder* dictum that "the government as landlord is still the government" and thus is subject to the constitutional limitations of due process.⁵⁰ Furthermore, the Court indicated its willingness when the issue is properly before it to consider to what extent the constitutional limitations of due process restrict a public housing authority in its dealings with tenants.⁵¹

Meanwhile, public housing authorities are bound by the HUD circular to give any tenant it wishes to evict notice of the reasons for the eviction and an opportunity to respond. Therefore, the implementation and interpretation of these requirements will, to a large extent, determine the future role of the courts in litigation of this kind.⁵² It seems almost certain, however, that courts will be called upon to decide what types of reasons are sufficient to evict a tenant from a public housing project and to establish guidelines to insure that the tenant will be given a fair hearing before he may be evicted. As to the proceeding, some sort of trial-type hearing would seem to be appropriate,⁵³ with the tenant having an opportunity to present his case and to confront the authority with respect to the legality and sufficiency of its reasons for the eviction.⁵⁴ Furthermore, it is imperative that the public housing administrator urging eviction should not be in a position to decide the legality and sufficiency of the reasons underlying his decision. "That a conclusion satisfies one's private conscience does not attest its reliability."⁵⁵

It would be easy to criticize the *Thorpe* decision for not setting forth the extent to which public housing authorities are bound by considerations of due process, and such criticism will undoubtedly be forthcoming.

⁴⁹ 393 U.S. at 283 n.45.

⁵⁰ 386 U.S. at 678.

⁵¹ 393 U.S. at 289 n.49.

⁵² For an early interpretation of the circular, see *Lancaster Housing Auth. v. Gardner*, 211 Pa. Super. 502, 240 A.2d 566 (1968).

⁵³ See *Rosen* 211.

⁵⁴ Cf. *Greene v. McElroy*, 360 U.S. 474 (1959).

⁵⁵ *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171 (1951) (Frankfurter, J., concurring). Justice Frankfurter continued:

The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it. *Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.* *Id.* at 171-72 (emphasis added).

On the other hand, and perhaps more importantly, the decision clearly puts public housing officials on notice that their actions in the future will be subject to judicial scrutiny. Hopefully, this factor will cause public housing officials to reevaluate their attitudes and to bring their policies into line with the goals and purposes underlying the public housing program.⁵⁶

Advocates of the system of justice found in the United States have often compared it favorably with judicial practices in other countries. Yet that very system has too often permitted those of our citizens who are dependent on government assistance in such areas as public housing to be treated "as nonpersons in a constitutional sense; as persons who have, in return for welfare payments, surrendered to the state's social workers their constitutional rights to privacy and personal security."⁵⁷ To permit this state of affairs to continue would be intolerable.

We need not go so far as to embrace the argument that the state has a constitutional duty to provide its indigent citizens with support; but if the state chooses to do so, it must proceed with careful regard to the rights of the recipients, for they, too, are persons within our constitutional scheme. Indeed, it may be that in the final analysis, a nation is measured—perhaps its future is determined—not by the protection which its institutions afford to the rich and strong, but by the meticulous care with which the rights of the weak and humble are safeguarded.⁵⁸

MICHAEL R. ABEL

Real Property—Tenancy by the Entirety in Real Property During Marriage

In determining the respective rights and interests of husband and wife (*H* and *W*) in jointly held real property, the common law accepted literally the Biblical statement that *H* and *W* are one. This legal fiction of "unity of person" was utilized to vest title to the real property in *H* and *W* simultaneously, *i.e.*, both owned the whole estate with neither holding

⁵⁶ "Because serious injury attends eviction from public housing, the threat of termination is a dangerous weapon. Used carelessly, it can create a hostile, bitter atmosphere in a housing project. Tenants, made to feel insecure, begin to distrust each other as well as project officials."

Comment, *Public Landlords and Private Tenants* 991.

⁵⁷ Fortas 413.

⁵⁸ *Id.* at 414.