# Mathews and the Modern World: If you are Entitled to a Hearing, How Much Process is Due?

# Learning Objectives for this Module

## Learn how the status of the affected persons can change the nature of the due process needed for fundamental fairness

## Learn how increasing due process rights can have unintended consequences in a program with limited resources

## Learn the analysis to determine if there must be a hearing before an agency can act.

## Learn the implications of making due process rights a cost-benefit analysis.

# Reading Assignment

## Chapter 4, pp 118-131.

# Issues to be addressed

## The Warren Court – 1953 – 1969

### Applied criminal due process to the states

### Developed requirements for administrative due process in areas where it has not been required

### Used a criminal due process model for administrative due process.

#### We will review this in more detail when we do admistrative searches.

### Goldberg can be seen as a holdover from the Warren court.

## Goldberg v. Kelly, 397 U.S. 254 (1970)

### Legal questions

#### Is a pre-action hearing required?

#### What due process is required for the hearing, if it is required?

### The statutory entitlement system

#### The welfare statute/regs establishes a set of objective criteria for qualifying for welfare.

#### These could include family income, whether there are minor children, is the family a married couple with both partners caring for the children.

#### If you meet the criteria, you qualify for welfare.

#### You continue to get welfare until you are removed from the rolls for cause, i.e., a finding that you no longer meet the criteria.

#### The admistrative cost problem

##### If there is too much due process, it will be expensive to remove people from the program who are no longer qualified.

##### The cost of due process reduces the money for benefits.

##### Unqualified people who stay, reduce the number of qualified new people who can be served.

### The pre-1996 Welfare System

#### What was/is the general attitude toward people on welfare?

#### What was AFDC?

##### Aid for families with dependent children.

##### The feds never provided much welfare for adults.

#### What were the unintended consequences of the welfare system?

##### Daniel P. Moynihan’s Benign Neglect Memo to President Nixon.

### Facts of the Case

#### This was a New York case over the administration of the federal AFDC program.

#### What was the economic status of plaintiffs?

##### How does this complicate their effectively asserting their legal rights?

##### Why had the Court recently created the right of appointed counsel for indigent criminal defendants?

##### Why do you think this was key demand by plaintiffs?

#### The termination process

##### The state used an informal process involving the case worker who oversaw the claimant’s case to decide if claimant no longer met the criteria.

###### Many of these criteria were soft, i.et. they depended on testimony and observation and were subject to questions of credibility.

###### Why might the case worker be biased?

##### The state offered a full due process hearing (minus appointed counsel) after termination.

###### What might limit the plaintiffs ability to take advantage of this hearing?

###### Few did, thus it was a very low cost system.

#### Why Does Plaintiff Want a Pre-termination Hearing?

##### How would you argue that there was real bias in the process being challenged?

##### Why couldn't plaintiff file a written response to the termination letter and contest the termination through the written process?

##### What could she do at a hearing that she could not do in writing?

##### Why would you argue that a post-termination hearing was not enough due process?

##### Why didn't the state want to give everyone a pre-termination hearing?

#### As the authors of the text indicate, the Court effectively ordered a classic APA hearing:

##### 1) timely and adequate notice

##### 2) oral presentation of arguments

##### 3) oral presentation of evidence

##### 4) confronting adverse witnesses

##### 5) cross-examination of adverse witnesses

##### 6) disclosure to the claimant of opposing evidence

##### 7) the right to retain an attorney (**no appointed counsel**)

##### 8) a determination on the record of the hearing

##### 9) record of reasons and evidence relied on; and

##### 10) an impartial decision maker

#### The Impact of the Goldberg Decision

##### What does granting these hearings do to the cost (delay + personnel time) of removing someone from welfare?

##### What does it do to the balance of benefits costs to administration costs?

##### What does this do to the global cost of the benefits system?

##### What is the incentive for the welfare officers under the Goldberg ruling?

##### What expectation does it create for welfare recipients?

##### What long term problem did this contribute to?

#### The Subsequent History of Goldberg

##### Never overruled

##### Superseded by Matthews

##### Ultimately limited to its specific facts

##### Unfortunately, many scholars did not notice this and have argued that all deprivations that affect individuals should have pre-deprivation process.

## Fixing Welfare - The 1996 Act

### Pushed by Newt Gingrich, Republican House leader

### Signed by Bill Clinton

### Replaced AFDC with TANF - Temporary assistance for Needy Families

#### What does the name change tell you about the change in philosophy?

#### Benefits are 5 years over a lifetime.

#### Supplemental Nutrition Assistance Program (WIC) is separate, so you can still get food. (This is the only general welfare program.)

### How does this affect future Goldberg actions?

#### What is limit on the expectation of benefits?

#### When the time runs out, is there any need for a hearing?

## Matthews v. Eldridge (1976)

### http://www.ssa.gov/disability/

### http://biotech.law.lsu.edu/Courses/adlaw/2014s/43421-DisabilityInsurance\_print.pdf

### Social Security Disability Insurance (SSDI) procedure for new applicants.

#### Get a form the Social Security office

#### What is the illness, the work history, the doc?

#### SSI orders records

#### A doc at SSI at Disability Determination Service - run by state as contractor - makes a determination

#### Sends to regional office

#### Regional office approves the claim, ask for more info, or denies the claim.

#### Claimant can ask for reconsideration

#### This is all done with records

##### Most problems arise because of poor documentation

##### The agency has limited authority to reject the treating physician's evaluation.

#### After denial, you can ask for a hearing before an ALJ

#### The agency treats the ALJ's decision as final

#### At this point you can appeal to the agency internal appeals process, then to the federal courts

#### Positive decisions are retroactive

##### How does this reduce the impact of the delay in the approval process?

##### How does this reduce the impact of an erroneous denial?

##### Generates the money to pay the attorney as well

#### Volume of Claims

##### Are there a lot of Social Security Disability claims every year?

##### Why is this important background for Matthews v. Eldridge?

##### Think about what this process looks like from the perspective of a disabled person trying to get benefits, or trying to avoid having benefits cancelled.

##### Will they usually have benefit of counsel?

### Background of the Case

#### Was plaintiff already on SSI?

##### Bad back and diabetes

##### Did he develop a complicating condition?

#### The 1972 questionnaire

##### Did Eldridge complete the questionnaire?

##### What did he indicate about his condition?

##### Did the agency still think he was disabled at this point?

### The Termination Process

#### Who is the movant at this point?

#### What did the agency decide about his condition as outlined in the tentative determination letter?

#### Was Eldridge given a chance to respond before his benefits were terminated?

#### Did he dispute their analysis of his condition?

#### Did he provide any new evidence to support his position?

#### What was the agency's response?

### The Agency Process

#### Did the SSA accept his rebuttal of their determination?

#### Did he get an in-person hearing?

#### Were his benefits terminated?

#### What was his recourse?

#### If it is later found that the benefits were improperly terminated, does the beneficiary get the back benefits?

### The Goldberg Rights

#### Using Goldberg, how do you argue that plaintiff should have a right to a hearing before his benefits are terminated?

#### How is he like the plaintiffs in Goldberg?

### If you are the agency, how do you argue that SSDI determinations are different from welfare termination decisions?

#### What sort of information was at issue in Goldberg?

#### What data is used for making disability determinations?

#### Who would be called as a witness on disability and what information would be relied on?

##### Is this different from the witnesses and facts in Goldberg?

##### How is the value of the claimant's testimony different from that in Goldberg?

#### How does this change the equities of Goldberg?

#### Why is the administrative decisionmaker less prone to make errors in this case than in Goldberg?

### The Accuracy of the Proceedings

#### Plaintiffs argue that the high reversal rate on appeal shows that the process makes lots of errors.

#### The plaintiff is allowed to resubmit his case after an adverse ruling, so he can address the deficiencies.

#### How does this make it difficult to determine if a reversal is due to an error by the agency?

### The Mathews Factors

#### First, the cost of an erroneous deprivation of the private interest at issue - (V)

#### Second, the probability of reducing the chance of error through more extensive or different procedures - (P)

#### Third, the government's interest in its procedures, i.e., the incremental cost of the additional or different procedures that might reduce errors - (C)

### The Mathews Factors as a Cost Benefit Analysis

#### What is the relationship between C and (P x V)

##### (C)ost of added process

##### (P)robability of increased accuracy

##### (V)alue of the benefit/cost of error.

##### C < P x V

#### What is the key to convincing the court that your client should get more process?

##### How does this transform the notion of fairness?

##### Is due process a good on its own in this analysis?

### Apply these Factors to the Case

#### How would you apply these factors to the Matthews case?

#### What about detaining a tuberculosis carrier?

#### A terrorist who might have information about a pending attack?

### Matthews as a the End of the Warren Court

#### How is Matthews different from the ideal of due process in Goldberg?

#### How does it differ from the notion that everyone gets criminal due process rights, including appointed counsel?

##### Would we do better in criminal law if we were forced to recognize costs and benefits?

##### Could the LA public defender system meet the Matthews test?

### How Far Does Matthews Go? - Hamdi v. Rumsfeld, 124 S.Ct. 2633 (2004)

#### The ordinary mechanism that we use for balancing such serious competing interests, and for determining the procedures that are necessary to ensure that a citizen is not "deprived of life, liberty, or property, without due process of law," U. S. Const., Amdt. 5, is the test that we articulated in Mathews v. Eldridge. Mathews dictates that the process due in any given instance is determined by weighing "the private interest that will be affected by the official action" against the Government's asserted interest, "including the function involved" and the burdens the Government would face in providing greater process. The Mathews calculus then contemplates a judicious balancing of these concerns, through an analysis of "the risk of an erroneous deprivation" of the private interest if the process were reduced and the "probable value, if any, of additional or substitute safeguards. http://biotech.law.lsu.edu/cases/nat-sec/hamdi.htm (at 65)

## Realities of Regulation

### The rule of agencies

#### Agencies can do effective regulation

#### Agencies can give extensive due process to regulated parties

#### Agencies can be cheap

#### Agencies can work quickly

### PICK 2, at most

## De minimis Test

### Some deprivations are too insignificant to trigger a right to a hearing

#### Putting a cop on paid sick leave did not trigger due process

#### Otherwise the courts will be in every employment action

### This is key issue in 1983 actions - how hard/often can the prison guard hit the prisoner?

## Alternative Remedies

### Due process is not the only remedy for many actions

### Contracts with the government are not property but are agreements governed by contract law.

#### The Court of Claims system deals with these.

### Unger v. National Residents Matching Program (not in the book)

#### Failing to admit resident after signing the match contract did not trigger a hearing, but would support a breach of contract action.

### Does your client really want a hearing, or would you prefer a contract action?

## Any Pre-Action Hearing Rights after Matthews?

### Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)

#### Firing a teacher

#### Applying the Matthews factors, how do you argue that an informal pre-termination hearing is required?

#### How is this different from Matthews itself as regards to the ability to cure problems with a post-termination hearing?

## Has there been a substitute for a hearing?

### Gilbert v. Homar, 520 U.S. 924 (1997)

#### Who did the guard work for?

##### Why did this make his arrest for marijuana possession a particular problem?

#### Did he get any due process prior to this suspension from the workplace?

##### What was the importance of the decision by an "independent body" and what was the body?

##### What are the limits of this opinion?

#### Why does this being a temporary suspension matter?

## The School Cases

### Goss v. Lopez, 419 U.S. 565 (1975)

#### High school student suspended from school

#### What due process did the court require?

#### What was the Mathews analysis?

### Ingraham v. Wright, 430 U.S. 651 (1977)

#### School paddling case

#### What due process did the court require?

#### What was the Mathews analysis?

#### How does the analysis differ from Goss?

##### Why?

#### Do we still paddle students?

##### Why not?

#### Is hauling them to jail more protective of their rights?

### Board of Curators of the Univ. of Missouri v. Horowitz, 435 U.S. 78 (1978)

#### Academic suspension case for a medical student

#### What due process did the court require?

#### What was the Mathews analysis?

##### What would be the costs of having due process for every failing student?

##### What would be the facts at issue?

#### Would this analysis differ if this had been a disciplinary suspension?

## Law School Disciple and Due Process

### Why does Mathews result in different standards for academic and disciplinary suspensions?

#### How do we tell whether it is an academic or disciplinary issue?

#### What about plagiarism? Cheating?

### What is the role of special expertise and deference?

#### Is this just judicial deference to agency expertise and policy making, with the school as agency?

# Evaluation Questions

## *Goldberg*

### What makes a benefit an entitlement?

### What is a matrix regulation?

### What was the fight in *Goldberg* over the timing of the hearing, i.e., what was plaintiff's argument for a pre-termination versus post-termination hearing?

### What was the informal process for terminating benefits that the plaintiffs wanted to change?

#### Why was it subject to serious bias problems?

#### What did plaintiff argue could help cure this inherent bias?

#### What sort of proceeding did plaintiffs want the court to look to when it analyzed their constitutional claims?

### What are the procedural rights established in *Goldberg v. Kelly*?

#### How they differ from the rights given indigent criminal defendants?

#### How the rights are specifically tailored to the special problems posed in providing due process to an indigent welfare population?

### In general, how does right to counsel differ in agency and criminal cases?

### What was the impact on the state welfare system of creating the *Goldberg* rights?

### How did the Welfare Reform Act of 1996 eliminate welfare as an entitlement?

#### What does TANF stand for?

#### This ended the benefits for all welfare recipients under the old program – did they have a right to any due process?

## Cost Benefit Analysis and Due Process

### *Matthews v. Eldridge*

#### What benefit was at issue in *Matthews*?

#### How were the facts determined for making the benefits determination in *Matthews*?

##### How is this different from *Goldberg*?

#### What is the role of the claimant’s testimony in *Matthews*?

##### How is this different from *Goldberg*?

#### Why does it not matter whether the claimant can personally present the case in writing?

##### How is this different from *Goldberg*?

#### Why did the court believe that a post-termination hearing was OK in *Matthews* and not in *Goldberg*?

#### Did the *Matthews* court overrule *Goldberg*?

#### Has *Goldberg* been applied in cases after *Matthews*?

### The *Matthews* balancing test

#### Explain each of the three *Matthews* factors and how the test works.

##### C < P x V

#### How is this analysis different from the due process analysis in criminal cases?

#### Why is *Matthews* a break from the Warren Court?

##### How is it a response to the effect of *Goldberg*?

#### How does the *Matthews* analysis dovetail with discretionary decisionmaking as a defense to tort claims against the agency? (You will not be able to answer this until we finish the last part of the course on suing agencies.)

## The School Cases

### What is the *Matthews* analysis in the school suspension and paddling cases?

#### Use these cases to show how the rights diminish as the injury caused by the punishment decreases.

### Melissa

#### If Melissa, an LSU student, admits to plagiarism, does she still get a hearing on whether she plagiarized?

#### What if she says that she copied the work, but she thought it was properly cited?

#### What if she is suspended from school after being arrested by the Baton Rouge police for attempted murder?

##### What if she is convicted?

#### What if she is suspended from school because someone posts on Facebook that she was cheating?

#### Melissa fails administrative law and thus flunks out of law school. She thinks she did a good job on the exam. She does not claim that the anonymous grading system failed – does she get a hearing?

#### Melissa is accused of stealing from another student’s locker and is expelled from law school – does she get a hearing?

### Matters of academic expertise versus matters of general knowledge

#### Why are the courts more deferential when universities are resolving academic matters than matters that are common to all business?

#### What is the law to apply problem with reviewing academic matters?

#### How would Mathews come in?

## Alternative Remedies

### What are alternative remedies to due process claims?

### What does the United States Supreme Court tell us is the remedy if your client believes she has been wrongly put on the "perverts R us" WWW site?

### Why are these alternatives sometimes better for you client?

### What are the disadvantages of an alternative remedy?

### For example, the case of the medical student who did not get the internship she bargained for - what was her alternative remedy, and why might it better than a due process right?