# Introduction to Due Process

# Learning Objectives for this Module

## Learn the difference between substantive and procedural due process.

## Learn the history of procedural due process.

## Learn the high water mark of Goldberg

# Reading Assignment

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

# Issues to be addressed

## 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?

# 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?