# 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.

# Issues to be addressed

## Matthews v. Eldridge (1976)

### The Termination Process

#### Was plaintiff already on SSI?

#### 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?

### What are 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)

#### 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?

#### How would you argue the Goldberg facts under Matthews?

## 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

## 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?