# Study Guide - Chapter 4

# Chapter 3 sets up the APA standards for adjudications. Chapter 4 is about the Constitutional standards for procedural due process in adjudications.

## Procedural due process refers to the procedures by which government may affect the rights of an individual in a specific situation.

### Remember – government actors, not private individuals or businesses.

## Procedural due process applies to adjudications and other proceeding that affect individuals or a small group of persons based on the specific factual determinations.

## There are no constitutional procedural due process rights in legislation or rulemaking.

# Basic Criminal Due Process Rights Review

## Right against self-incrimination

## Right to confront witnesses

## Right to be free from unreasonable searches and seizures

## Right to a speedy and public trial

## Right to trial by jury in serious cases.

## Right to counsel extended to all cases, not just serious cases – Argersinger v. Hamlin, 407 U.S. 25 (1972)

# What was the constitutional standard for procedural due process for government benefits and jobs before the Warren Court?

## How did this lead to the Bitter with the Sweet Doctrine?

## Unless limited by civil service or other legislation, all governmental job holders were subject to be being fired without recourse.

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

## What makes a benefit an entitlement that triggers due process?

## What was the economic status of plaintiffs?

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

## When were plaintiffs entitled to an in person hearing in Goldberg?

## When did they want the hearing?

## What were the problems with the informal system of reevaluating beneficiaries' status?

## What was the impact on plaintiffs of terminating benefits?

## How does this further complicate post-deprivation hearing rights?

## What did the Plaintiffs Want?

### A hearing before benefits were terminated, rather than after the benefits were terminated.

### The right to an oral hearing and the ability to confront witnesses.

### The right to appointed counsel paid for by the state.

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

### Why couldn't plaintiff file a written response to the termination letter?

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

### Why wasn't a post-termination hearing enough?

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

## What procedural due process rights did the Goldberg Court find were required?

## Administrative Costs of Goldberg

### 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?

## Short-Term Impact of Goldberg

### How does raising the administrative costs affect processing new claims for welfare?

### 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 1996 Welfare Reform Act - TANF - Temporary assistance for Needy Families – put a 5 year limit on the time a person can collect welfare.

### How does this affect future Goldberg actions?

### Will there be facts in dispute?

### If there is no factual dispute, is there a right to hearing?

# Employment Hearings

## Key Question: What are the purposes of a hearing?

## Why Bother with the Hearing if the facts indicate that the client will lose?

## Many agencies, especially state and local government agencies, do not do a great job at building records.

# Perry v. Sinderman, 408 U.S. 593 (1972)

## What does he have to show to be entitled to a hearing?

## What facts did he use to show this?

# Boards of Regents v Roth, 408 U.S. 564 (1972)

## What were the employment facts that caused Roth to fail, when Perry succeeded?

## What alternative theory did Roth put forward?

## Why did this fail?

## More generally, what are the limitations on firing a government employment who does not have an expectation of continued employment?

# Mitigation

## If the decisionmaker has disciplinary alternatives, how can this be used to justify a hearing?

## What does Loudermill tell us?

# Review the Melissa hypotheticals.

# New Property v. Old Property

## How do these cases create the "new property"

## How is the process different if I take your medical license, versus taking your land?

## What if I abolish law licenses or welfare programs through legislation? Do you have a due process claim?

# Liberty Interests

## What is a liberty interest?

## What are examples?

# Wisconsin v. Constantineau, 400 U.S. 433 (1971) and Paul v. Davis, 424 U.S. 693 (1976)

## These are the stigma plus cases.

## How does the court distinguish the cases?

## In Paul. What did Rehnquist say was his remedy if the characterization was incorrect?

## How is this applied to the later case where the state is going to list all persons convicted of a list of sexually related crimes on a public registry?

### Why isn't this an additional punishment?

### When did plaintiff get his due process?

# The Reference Problem

## We have two cases, Codd and Siegert that deal with whether due process rights are triggered by a bad reference letter.

## Assuming that the reference letter is accurate, you have to sort out the reason for the firing, which might trigger a due process hearing, from the reference letter reporting the events.

## How might this be changed if the letter is not accurate, and reports problems that are not real?

# Prisons

## Sort out the deprivation of specific constitutional rights cases – free exercise of religion, cruel and unusual punishment – from the pure liberty interests, i.e., things that affect your being in jail.

## Due process claims require the plaintiff to show that he had a liberty interest in the proceeding.

### Why are things that affect good time credit or parole most likely to trigger a liberty interest?

## Even if the court finds a liberty interest, what can realistically be expected in the way of process?

## What rights does a prisoner retain?

# Mathews v Eldridge (1976)

## Mathews was a fight over the timing of a hearing – before the benefits cut, or after?

## It is critical to remember that the holding in Mathews is much broader, applying to all due process cases.

## The Mathews Factors as a Cost Benefit Analysis – go back to your notes and the slides and make sure you understand what factor means when you are applying them to a case.

### The relationship between C and (P x E)

#### C) Cost of the requested process

#### (P) Probability of increased accuracy (errors prevented)

#### (E) Cost of the errors

#### C < P x E

### 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?

## Appling these factors

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

#### Does plaintiff get his pre-termination hearing?

### What about detaining a tuberculosis carrier?

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

### How does Matthews implicitly limit Goldberg to its facts, i.e., it is not overruled, but it is no longer good law.

# Alternative Remedies - Government Contracts

## Why might you prefer a contract action to a due process action if you can get it for your client?

# Pre-Action Hearing Rights after Matthews

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

### Firing a school security guard who had an expectation of continued employment

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

#### What is special about a job in a school that makes it hard to cure the consequences of a wrongful termination?

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

### Has there been a substitute for a hearing?

### 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?

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

#### Will he get a hearing later?

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

### High school student suspended from school

#### What is the impact of an improper suspension?

#### Can it be cured by later process?

### What due process makes sense?

#### A full hearing prior to suspension?

### What did the court require?

#### A chance to know the charge and rebut it.

#### What might that look like?

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

### School paddling case

#### Why is timing important?

#### What would a hearing accomplish?

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

### Academic suspension case for a medical student

### The key Mathews question is how would you make the process more accurate?

#### Does the court or hearing officer have any applicable standards to evaluate the student’s academic performance?

#### How about regrading a law school exam?

#### Should every student with a low grade get a hearing?

### These problems make the courts very deferential to academic decisionmaking.

## Academic Discipline 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?

#### Grading an exam?

#### Performance in a clinic?

#### What about plagiarism? Cheating? Theft?

### If you want a hearing for your client, how do you have to characterize the dispute?

#### Common sense standards v. academic standards?

# Bias in Administrative Hearings

## Remember separation of functions from Chapter 3?

### 554(d)

####  This subsection does not apply ...

#### (C) to the agency or a member or members of the body comprising the agency.

### The “agency” means the secretary in an agency with a single head.

### The “body comprising the agency” is the commissioners or board members of an agency headed by a committee.

## Withrow v. Larkin, 421 U.S. 35 (1975)

### State medical licensing board

#### Why is the doc worried that having the board run all aspects of the case will lead to bias?

### Why did the court find that it was not necessary to separate them?

#### The Supreme Court reiterated the fundamental importance of the need for an unbiased decision maker, but it found that the mere combination of investigatory, prosecutorial, and adjudicatory functions in the same entity did not necessarily make the entity biased in adjudicating.

### Why is the record so important in these cases?

#### What do you have for an appeals court to evaluate?

### Why would an independent ALJ be a particular problem for these cases?

## Disqualifying an Administrative Law Decisionmaker for Bias

### What is the United States Supreme Court standard?

### What is the Doctrine of Necessity?

### How does this explain why the Secretary of EPA was very circumspect when talking about the BP oil spill?

## Congressional Meddling - Pillsbury Co. v. FTC, 354 F.2d 952 (5th Cir. 1966)

### What did Senator Kefauver say?

### What the court was worried about:

### What happens if the court disqualifies the commission because of the intimidation in the Senate hearing?

### How did the court solve the problem in this case?

## What should Congress be able to do in Hearings and for Casework?