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THE REALITY OF PROCEDURAL DUE PROCESS—A STUDY OF THE IMPLEMENTATION OF FAIR HEARING REQUIREMENTS BY THE WELFARE CASEWORKER

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The constitutional mandates of procedural due process have been more sharply defined in recent years as a result of the decision of the Supreme Court in *Goldberg v. Kelly*.¹ Although the full extent of the doctrine has not yet been delimited,² the core proposition seems well established that in the absence of an overriding governmental interest, procedural due process requires that an individual be accorded notice and a hearing prior to an administrative decision that would adversely affect his ability

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1. 397 U.S. 254 (1970).

2. The procedural due process requirement of notice and a prior hearing was first enunciated in *Snadach v. Family Finance Corp.*, 395 U.S. 337 (1969). In a decision which has been the subject of extended commentary, the Court held that in the absence of a special state or creditor interest due process requires that a debtor be given notice and an opportunity to be heard prior to a pre-judgment garnishment of his wages.

A number of courts have applied these principles to other summary proceedings involving the taking of property. See, e.g., *Laprease v. Raymours Furniture Co.*, 315 F Supp. 716 (N.D.N.Y. 1970) (replevin statute); *Klim v. Jones*, 315 F Supp. 109 (N.D. Cal. 1970) (innkeeper's lien statute); *Blair v. Pitchess*, 5 Cal. 3d 258, 486 P.2d 1242 (1971) (claim and delivery statute). But see, *Fuentes v. Faircloth*, 317 F Supp. 954 (S.D. Fla. 1970), *prob. juris. noted*, 401 U.S. 906 (1971). The *Snadach* and *Goldberg* rationale also formed the basis for a constitutional attack on confession of judgment notes. In two recent cases the Supreme Court refused to hold cognitive judgments unconstitutional per se, finding that such provisions may well serve a proper and useful purpose in a commercial context where debtor has voluntarily, intelligently, and knowingly waived the rights he otherwise possessed to prejudgment notice and a hearing. *D. H. Overmyer Co. v. Frick Co.*, 40 U.S.L.W. 4221 (U.S. Feb. 22, 1972); *Swarb v. Lennox*, 40 U.S.L.W. 4227 (U.S. Feb. 22, 1972).

to subsist by contemporary standards.³ In applying this principle to the termination of public assistance payments, the Court in *Goldberg* held that a welfare recipient is entitled to a pre-termination evidentiary hearing to determine the probable validity of the welfare agency's grounds for discontinuance of payments.⁴ In addition, the recipient must be afforded timely and adequate notice detailing the reasons for the proposed termination and an opportunity to defend himself by confronting adverse witnesses and orally presenting his own arguments and evidence.⁵ The mandatory imposition of these procedural requirements is apparently subject to two criteria: (1) the deprivation of benefits will have the effect of reducing the recipient to a condition of "brutal need" thus requiring a strong certainty of accuracy by the decision maker; and (2) the administrative decision raises, to at least some degree, issues of fact to which the recipient can contribute in evaluation of the evidence.⁶

3. It has been persuasively argued that the implications of *Snadach* and *Goldberg* are substantive and not procedural. Thus, the Court is not attempting to balance the interests of the individual and the government in any traditional sense, but rather is seeking to establish that where the property involved is of a specialized nature, essential to everyday living, the requirements of notice and a prior hearing always outweigh any claimed governmental interest in the challenged activity. Note, *The Growth of Procedural Process Into A New Substance: An Expanding Protection for Personal Liberty and A Specialized Type of Property In Our Economic System*, 66 Nw. U. L. Rev. 502 (1971). The recent decisions by the Supreme Court, however, in *Overmyer v. Frick* and *Swarb v. Lemox* cast some doubt on the extent to which the Court has fully embraced the specialized property rationale.

4. 397 U.S. 254 (1970) Under the public assistance titles of the Social Security Act, 42 U.S.C. §§ 301 *et seq.*, 601 *et seq.*, 1201 *et seq.*, 1351 *et seq.*, 1381 *et seq.* (1970), the Federal Government provides substantial financial support for categories of needy persons including Old Age Assistance (OAA), Aid to the Blind (AAB), Aid to the Permanently and Totally Disabled (AD), Aid to Families with Dependent Children (AFDC), and general Medical Assistance (Medicare). These programs are administered by the states with grants-in-aid from the Federal Government. In *Goldberg*, 14 of the respondents were AFDC recipients alleging that New York State and City Social Welfare officials administering these programs had terminated or were about to terminate assistance without prior notice and a hearing, thereby denying them due process of law. 397 U.S. at 256.

In a companion case the Court held that the California procedure for suspension of benefits to OAA recipients was constitutionally defective because it failed to afford a recipient an evidentiary hearing at which he could confront witnesses and present oral testimony. *Wheeler v. Montgomery*, 397 U.S. 280 (1970)

5. 397 U.S. at 267-68.

6. Following *Goldberg* a number of courts have found state procedures for termination or suspension of public assistance benefits constitutionally defective. See *Lage v. Downing*, 314 F. Supp. 903 (S.D. Iowa 1970); *Sims v. Juras*, 313 F. Supp. 1212 (D. Or.

The decision in *Goldberg* dealt only with the termination and suspension, not the reduction, of public assistance payments.⁷ Assuming that the procedural due process concept which is presently emerging embraces a balancing of competing interests, the issue of benefit reductions is potentially more troublesome than termination or suspension, especially where the action arises out of an across-the-board reduction of benefits pursuant to a change in agency policy.⁸ Nonetheless, it seems clear that both of the preconditions to the imposition of the *Goldberg* requirements are equally as applicable to the question of benefit reductions as to termination and suspension.⁹ Based on this analysis, the constitutional implications of *Goldberg* can be clearly stated: Due process requires that any adverse change in the terms and conditions for receipt of public assistance benefits arising out of individual questions of fact or judgment must be preceded by adequate notice to the recipient and an opportunity for an evidentiary hearing prior to the effective date of the proposed agency action.

1969); *Camerena v. Dep't of Pub. Welfare*, 106 Ariz. 30, 470 P.2d 111 (1970); *Pack v. Dietz*, 455 S.W.2d 575 (Ky. 1970).

In addition, two courts have extended *Goldberg* to termination or suspension of unemployment compensation benefits. *Crow v. California Dep't of Human Resources*, 325 F Supp. 1314 (N.D. Cal. 1970); *Java v. California Dep't of Human Resources*, 317 F. Supp. 875 (N.D. Cal. 1970).

7. When faced initially with the question of whether to extend *Goldberg* to reductions as well as termination, the Court expressly reserved ruling to enable the lower courts to consider the impact of the new formulations of procedural due process on the specific issue of benefit reductions. *Daniel v. Goliday*, 398 U.S. 73 (1970) (per curiam), *vacating and remanding* 305 F Supp. 1224 (N.D. Ill. 1969).

8. *Merriweather v. Burson*, 325 F Supp. 709 (N.D. Ga. 1970). Faced with the question of benefit reductions the court limited the application of the *Goldberg* requirements to cases turning solely on factual issues:

A common-sense view of the spirit of the *Goldberg* decision seems to indicate a desire to prevent a unilateral factual determination on the part of welfare officials that a particular recipient is ineligible for benefits, in view of the possibility that a determination thus made may be disputed or erroneous. This view necessarily implies that where a reduction is not thus grounded on particular facts relating to an individual recipient or assistance group, there is no need for an evidentiary hearing. Thus, where across-the-board cuts in funding necessitate wholesale reductions in benefits, it would be a useless expenditure of money to hold hearings at the request of any number of recipients opposed to reductions dictated by the state or federal legislature.

325 F Supp. at 711.

9. *Hunt v. Edmunds*, 328 F Supp. 468 (1971). See also *Gray v. White*, 2 CCH Pov. L. REP. 13, 626 (1971); *Korovajev v. Smith*, 2 CCH Pov. L. REP. 14, 0933 (1971) (preliminary injunction issued restraining public assistance officials from ordering any reductions in assistance where issues of fact were involved).

The growth of procedural due process as reflected in *Goldberg* and its progeny has been the subject of extended commentary.¹⁰ An examination of the constitutional bases of the decision and its implication in terms of developing legal theory, though valuable, tends to ignore the actual effect of the decision in terms of the specific factual context out of which it emerged—the welfare hearing process. A more complete insight into the operation of this procedure, now invested with constitutional sanctity, requires an analysis of the administration of the hearing process at the state level. In the absence of adequate administrative compliance, the new requirements of procedural due process, whatever their content, are of little benefit to welfare recipients.¹¹ To gauge accurately what due process means in operation, it is necessary, therefore, to analyze not only the implications of *Goldberg* on the legal framework of welfare appeals, but to explore as well the reality of procedural safeguards in the administration of public assistance.

THE EFFECT OF *Goldberg* ON THE FAIR HEARING PROCESS

The impact of *Goldberg* on the welfare appeals process has been both subtle and significant.¹² The basis of this process centers on the ad-

10. Note, *supra* note 3.

11. Professor Ten Broek has observed that:

For the intelligent, the articulate and the informed, these procedural safeguards are not only adequate but of the utmost importance. [F]ew claimants come with lawyers. Most welfare applicants or recipients are simply not able to utilize this machinery without a great deal of help. It is the help they are supplied with which, in the end, converts these procedural safeguards into a hearing process fair to them. Without such help to most claimants, fair hearings would be a sham and a farce in which the elaborate machinery and procedural rights—drawn from precedents which presupposed the customary use of lawyers as professional helpers—would stand as cynical mockery of claimants who assayed to employ them but whose inability foredoomed them to failure.

Ten Broek, *Operations Partially Subject to the APA: Public Welfare Administration*, 44 CALIF. L. REV. 242, 259 (1956).

12. In addition to its impact on the public assistance titles of the Social Security Act, *Goldberg* has formed the basis for an attack on the suspension or termination of OASDI disability benefits under Title II of the Social Security Act [42 U.S.C. § 401 *et seq.* 1970] without prior notice and a hearing. *Wright v. Finch*, 321 F. Supp. 383 (D.D.C. 1971). In a recent per curiam opinion, the Supreme Court vacated the district court judgment in light of new regulations issued by the Secretary of Health, Education and Welfare governing the procedures to be employed in determining whether to terminate or suspend benefits. *Richardson v. Wright*, 40 U.S.L.W. 4232 (U.S. Feb. 22, 1972). In dissent, Justice Brennan argued that the new procedures, which provided for notice and an opportunity to submit rebuttal evidence, fell short of *Goldberg* in not providing

ministrative "fair hearing" before the appropriate state agency which is required by the Social Security Act for "any individual whose claim for [aid or] assistance is denied or is not acted upon with reasonable promptness."¹³ Prior to *Goldberg*, the Department of Health, Education and Welfare (H.E.W.) had issued regulations designed to govern the conduct of the fair hearing by the participating state agencies.¹⁴ These regulations contemplated a post-termination hearing procedure available to any recipient who was aggrieved by any agency action "affecting his receipt or termination of assistance or by agency policy as it affects his situation."¹⁵ The regulations required the state agencies to provide welfare claimants with full and complete information concerning their rights to appeal,¹⁶ full visibility and access to the hearing process,¹⁷ and the availability of independent representation.¹⁸

In November 1968, subsequent to the district court decision signaling the new judicial attitude toward pre-termination notice and hearing,¹⁹ H.E.W. issued a proposed regulation providing for the continuation of assistance to a welfare recipient who requests a fair hearing to challenge a reduction or termination of assistance, and requiring that welfare agencies provide a recipient with free legal representation during the fair hearing process.²⁰ This regulation never became effective,²¹

recipients with the right to submit oral evidence and confront witnesses. 40 U.S.L.W. at 4233.

13. 42 U.S.C. § 302(a)(4) (1970). See also §§ 602(a)(4), 1202(a)(4), 1352(a)(4), 1382(a)(4) (1970).

14. U. S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION, pt. IV §§ 6000-6999 (1968) [hereinafter cited as HANDBOOK]. These regulations are binding on all states participating under the public assistance titles of the Social Security Act. *King v. Smith*, 392 U.S. 309 (1968). On the nature and effect of the federal hearing requirements, see generally, Scott, *The Regulation and Administration of the Welfare Hearing Process—The Need for Administrative Responsibility*, 11 WM. & MARY L. REV. 291 (1969).

15. HANDBOOK, *supra* note 14, § 6200(b). See, Scott, *supra* note 14, at 304-08.

16. HANDBOOK, *supra* note 14, §§ 6200(f), 6300(f)(j), 6400(c).

17. *Id.* §§ 6200(c)(e)(i), 6300(i)(n)(o), 6400(b)(h).

18. *Id.* §§ 6300(k), 6200(f)(3), 6500(3).

19. *Kelly v. Wyman*, 294 F. Supp. 893 (1968). The district court held that "due process requires an adequate hearing before termination of welfare benefits, and the fact that there is a later constitutionally fair proceeding does not alter the result." *Id.* at 901.

20. 33 Fed. Reg. 17853 (1968). The final regulations were issued January 24, 1969 to be effective October 1, 1969. 34 Fed. Reg. 1144 (1969).

21. On August 23, 1969, H.E.W. amended the above regulation in order to postpone the effective date from October 1, 1969 to July 1, 1970. 34 Fed. Reg. 13595 (1969). The

and in May 1970 H.E.W. once more proposed regulations to amend the fair hearing requirements and to implement the *Goldberg* decision.²² These new regulations had a dual objective. In the first place, they revoked the previous requirement that state agencies provide free legal counsel to represent claimants at fair hearings.²³ Secondly, they attempted to conform the federal procedures to the mandates of due process by combining the pre-termination evidentiary hearing required by *Goldberg* and the post-termination administrative fair hearing into a single hearing process with the continuation of assistance where the caseworker's decision as to termination or reduction rested on issues of fact or judgment.²⁴

Whether the implications of the *Goldberg* requirements or more concrete economic considerations were responsible for the decision to revoke the free legal representation requirement is not entirely clear.²⁵ In any event, the effect of this action on the actual operation of the hearing process is to insure that the burden of fully informing a claimant of his right to a fair hearing, aiding him in the initial process of preparing

postponement of the continuation of assistance provision seems to have been precipitated by opposition by the states contesting the initial regulation on the ground that its effect would be to keep recipients on the rolls beyond the point of reasonable question about their eligibility. 2 CCH Pov. L. REP. 10, 246 (1971). The delay in the effective date of the free legal representative requirement was ostensibly to enable H.E.W. to work together with the various state agencies in building an effective, broad-based legal services program. *Id.*

22. 35 Fed. Reg. 8448 (1970) (H.E.W. proposed regulations)

23. *Id.* The *coup de grace* to the requirements of free legal services to recipients was administered on June 30, 1970 when the regulation was finally revoked one day prior to its effective date. 35 Fed. Reg. 10591 (1970). Federal financial participation continues to be available under the new regulations for service costs incurred by the agency in providing legal counsel to represent clients at hearings or in judicial review should the agency elect to make such services available. 45 C.F.R. § 205.10(b)(4) (1970).

24. 35 Fed. Reg. 8448 (1970).

25. Justice Brennan speaking for the Court in *Goldberg* stated that: "We do not say that counsel *must* be provided at the pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires." 397 U.S. at 270 (Emphasis supplied).

Although the new regulations do not require the agency to provide legal services to persons appealing an agency decision, they do require that the agency advise them of any legal services in the community that are available. U.S. DEPT OF HEALTH, EDUCATION AND WELFARE, APA FINANCIAL ASSISTANCE MANUAL, pt. 6, 6-30-20 (H). In addition, H.E.W. interpretations of the new regulations emphasize that the recipient is entitled to non-legal representation including law students, relatives, friends, or other spokesmen of his choice. The welfare agency has a responsibility to help establish that such representation is not a violation of state law concerning non-legal representation. *Id.*, pt. 6, 6-30-20 (B).

his appeal and encouraging him to utilize whatever legal services are available remains solely the responsibility of the individual welfare case-worker.²⁶

The effort to conform the federal hearing procedures to comply with *Goldberg* is equally telling. The new federal hearing requirements²⁷ introduce a limitation on the access of the aggrieved welfare claimant to the fair hearing process prior to the effective date of the proposed agency action. In cases of proposed action to terminate, suspend, or *reduce* assistance,²⁸ the state agency must give timely and adequate advance notice to the recipient detailing the bases for the action,²⁹ which must include an opportunity for the recipient to participate in informal adjustment procedures short of a formal appeal.³⁰ If the recipient requests a fair hearing within the notice period,³¹ assistance is continued until the final hearing decision is rendered *unless* the state agency determines that the issue is not one of fact or judgment relating to the individual case, but rather involves questions of state agency policy.³² If the latter situation is found to exist, the agency may, by so informing the claimant

26. Scott, *supra* note 14, at 301-02.

27. The final federal hearing regulations were approved February 6, 1971, effective April 13, 1971. 45 C.F.R. § 205.10 (1971).

28. 45 C.F.R. § 205.10(a)(5) (1971). By incorporating reductions as well as termination or suspension into the pre-termination procedure, the federal regulations would seem to render moot any further constitutional considerations of this question.

29. 45 C.F.R. § 205.10(a)(5)(i) (1971). The regulations provide that under this requirement:

(a) "Timely" means that the notice is mailed at least 15 days before the action is to be taken.

(b) "Adequate advance notice" means a written notice that includes details of reasons for the proposed agency action, explanation of the individual's right to conference, his right to request a fair hearing and the circumstances under which assistance is continued if a fair hearing is requested.

Id. § 205.10(a)(5)(i)(a)(b).

30. 45 C.F.R. § 205.10(a)(5)(ii) (1971). If the recipient requests an agency conference within the notice period, he must be provided an opportunity to discuss his situation with the local administration, receive an explanation of the agency's reasons for the proposed action, and be permitted to present information by way of rebuttal. The claimant must be afforded the opportunity at this conference to be assisted by a representative of his choosing or to speak for himself. The request for an informal conference in no way limits the claimant's right to a fair hearing. *Id.* § 205.10(a)(5)(ii)(a)(b).

31. Where the recipient fails to request a hearing within the notice period the state may provide for an additional period of time to receive a request. A request submitted in a later period can then, at the option of the agency, result in reinstatement and continuation of assistance pending a final hearing decision. *Id.* § 205.10(5)(iii)(b).

32. *Id.* § 205.10(5)(iii)(a)(1).

in writing, discontinue assistance prior to the initiation of the hearing process.³³

The effect of these provisions is to permit a state agency to avoid the application of the *Goldberg* requirements merely by a finding that the issues raised involve policy and not fact. While it is true that the agency decision must be based on established criteria,³⁴ it seems implicit in the regulations that any attempt to challenge the decision as being arbitrary and capricious requires the recipient to engage in sophisticated legal maneuvers having been deprived, meanwhile, "of the very means by which to live while he waits."³⁵ It may be argued that the overriding governmental interest, implicitly recognized in *Goldberg*, prevails where general policy considerations are involved;³⁶ nonetheless, the federal regulations, by adhering to the letter of the *Goldberg* requirements, once more place a significant burden on the local administration of the hearing process to convert the new procedural safeguards into a meaningful reality for the welfare claimant.

Potential challenges to this limitation may be reduced by the intro-

33. This provision is permissive only. In any event the state agency may, if it desires, provide for continuing assistance in all cases. *Id.* § 205.10(5)(iii)(b).

34. *Id.* § 205.10(5)(iii)(a)(1). H.E.W. has issued interpretations of the new regulations which attempt to distinguish between issues of fact or judgment and issues of state law or agency policy. Issues of fact or judgment include issues arising from the application of state law or policy to the facts of the individual situation. Thus, for example, in a situation arising out of the use of a ratable reduction, if there is a question whether the formula for reducing the grant was correctly applied in an individual case, it is an issue of fact or judgment and assistance must be continued. On the other hand, if the individual challenges the use of a ratable reduction, he is questioning the policy itself, and assistance would not need to be continued during the fair hearing process. Any challenges based on the alleged inadequacy of the state program, for example, the failure to include school supplies in the standard or the imposition of a maximum on shelter costs raise issues of agency policy. Examples where issues of fact or judgment arise are (1) an agency decision on permanent and total disability; (2) whether or not a father is "employed;" and (3) whether the recipient continues to be a resident of the state. U. S. DEP'T OF HEALTH, EDUCATION AND WELFARE, APA FINANCIAL ASSISTANCE MANUAL, pt. 6, 6-30-20 (G). See also H.E.W. draft criteria published in U. S. DEP'T OF HEALTH, EDUCATION AND WELFARE, INFORMATION MEMORANDUM, AO-1M-19 (May 29, 1970).

35. 397 U.S. at 264 (1970).

36. The qualifying language of *Goldberg* from which the fact-policy dichotomy has emerged is found in footnote 15 of the Court's opinion:

15. This case presents no question requiring our determination whether due process requires only an opportunity for written submission, or an opportunity both for written submission and oral argument, where there are no factual issues in dispute or where the application of the rule of law is not intertwined with factual issues.

397 U.S. at 268 (1970) (citations omitted).

duction in the federal regulations of a new concept—the group hearing.³⁷ Under this provision, the state agency may consolidate individual requests for fair hearings into a single procedure where the sole issue involved is one of agency policy.³⁸ If recipients request a group hearing on such an issue, it must be granted by the state agency.³⁹ The establishment of procedures for what amounts to a quasi-class action serves to mitigate to a considerable degree the hardship imposed on any individual recipient who desires to question fundamental agency policy.

The actual conduct of the fair hearing remains largely unchanged in the new regulations. The federal requirements incorporate the *Goldberg* guidelines by providing the claimant with the opportunity to present his position orally,⁴⁰ to confront and cross-examine adverse witnesses,⁴¹ and to be represented by counsel or other spokesmen.⁴² In addition, they establish once again the necessity for an impartial decision maker⁴³ whose conclusion must rest solely on the evidence adduced at the hearing.⁴⁴

The relevancy of *Goldberg v. Kelly* to the fair hearing process lies not so much in the expansion and modification of the federal hearing regulations as in the fact that the decision places the imprimatur of constitutional due process on the concept of a full scale formal hearing with established procedural safeguards. *Goldberg* implicitly recognized not only that procedural due process in this context requires an initial pre-termination adjudication, but that the hearing itself must incorporate certain formalized procedural requirements in order to protect fully the rights of the claimant.⁴⁵ The question of whether a hearing which incorporates adversary procedures is desirable or necessary seems moot in view of the fact that the requirement of such a process have been decreed, at least implicitly, by the highest constitutional authority

37. 45 C.F.R. § 205.10(a)(3)(iv) (1971).

38. *Id.* The regulations provide that in such situations each individual must be given the right to withdraw from the group hearing in favor of an individual hearing.

39. *Id.* In all group hearings the procedures governing fair hearings generally must be followed. Consequently, each individual must be permitted to present his own case and be represented individually by counsel.

40. 45 C.F.R. § 205.10(a)(10)(ii) (1971).

41. *Id.* § 205.10(a)(10)(vi).

42. *Id.* § 205.10(a)(2)(iii).

43. *Id.* § 205.10(a)(8). Under this requirement, the hearing official must not have been involved in any way with the action in question.

44. *Id.* § 205.10(a)(14).

45. 397 U.S. at 268-71.

THE EFFECT OF *Goldberg* ON THE LOCAL ADMINISTRATION OF WELFARE
APPEALS—THE PROBLEM STATED

The Role of the Welfare Caseworker

The primary responsibility for fulfillment of the federal hearing requirements at the state level is borne by the local caseworkers who are in direct contact with claimants and who, often, are the only segment of the agency visible to welfare recipients.⁴⁶ Because contact with claimants is direct and unique, the role of the caseworker is an integral part of the hearing process. Without full administrative implementation of the essential hearing requirements, elaborate procedural safeguards insuring due process during the hearing are useless formalities. The special needs of welfare claimants require that they be fully informed of the nature of the hearing process prior to any agency decision. This is a prerequisite to any form of fair hearing. Without effective compliance with these requirements by the caseworker, few if any claimants will have recourse to the fair hearing procedure.

The administration of the hearing process at other levels of the agency is also significant. It is equally debilitating to claimants if they are faced with practices at the state level which deny them the full opportunity for impartial consideration of their appeal.⁴⁷ However, admitting the need for investigation and study of all areas of hearing administration, prime consideration must first be given to the local administration, and

46. An individual who first makes application for public assistance under a federally approved plan begins at the "intake" procedure which processes and categorizes new applicants for assistance. Assuming compliance with federal standards, the applicant is given appropriate notice at this time of his rights under the Act, including the right to a fair hearing. The same notice requirement exists at any future date when the applicant or recipient is advised of any decision affecting his receipt of assistance. Throughout this initial process, and continuing indefinitely if his request is granted, the client's only contact with the agency is with the caseworker employed by the local county or regional office. It is the caseworker who is charged with the function of fulfilling the notice requirements, attempting to resolve and satisfy client dissatisfaction, and who ultimately initiates the hearing process when a request for a hearing is made.

Scott, *supra* note 14, at 301-02.

47. A number of welfare recipients have filed class actions seeking to enjoin the State Agency from employing practices which (a) allegedly deny claimants at the whim of hearing officers the right to call and question witnesses or to "advance arguments and raise issues," (b) condone hearsay evidence and denial of opportunity to confront witnesses at the hearing, (c) violate basic rights such as interrogations of claimants outside of hearings, and (d) sustain "admittedly erroneous" decisions. *Royal v. Wyman*, Civ. No. 3237 (S.D.N.Y. filed Aug. 6, 1968)

particularly the individual caseworker. In order to establish the extent of administrative compliance with hearing requirements by the caseworkers, a research study based on their attitudes and perceptions of the hearing process was formulated and conducted. The results of this study and the implications which it raises serve to identify more fully the nature of the problem facing claimants who seek to employ the welfare hearing to protect their rights under the Constitution and federal law.

The Impact of Caseworker Attitudes and Perceptions

The best indication of the degree to which caseworkers fulfill their responsibilities to the claimant is obtained through an analysis of their attitudes toward the hearing process as it is constituted by the federal requirements, and their perception of their role in that process. It is necessary first to isolate those factors which form the basis of these attitudes.

A primary factor in the formation of hearing attitudes is the question of whether or not the hearing process is regarded as essential to the effective administration of public assistance. One view is that the existing system of administration, being designed primarily to aid the claimant, has fulfilled this goal adequately and effectively; and that although the fair hearing is available for those who are dissatisfied with agency decisions, such a process is neither necessary nor appropriate to control and govern agency action and policy.⁴⁸ This position indicates a degree of satisfaction with existing administrative policies and practices which potentially precludes a recognition of the need for a fair hearing incorporating the elaborate procedural rules expressed in the federal regulations.⁴⁹ Another factor relevant in determining attitudes toward the fair hearing is the question of whether or not there is general recognition by caseworkers of the necessity for full explanation to claimants of the right to a hearing and the procedures which it entails.⁵⁰ Administra-

48. Interview with Welfare Administrator. This feeling has been expressed by one supervisor who states that "although there are many problems in welfare administration, I think the agency is basically sympathetic and understanding of the needs of recipients."

49. Whether or not a full-scale formal hearing is, in fact, the most effective means of controlling agency action and protecting the rights of welfare recipients is not the question here. The fact remains that such a procedure is contemplated by *Goldberg v. Kelly* and the federal regulations. Therefore, as the "only game in town" it seems important that the players comply with the rules.

50. Full exploration requires more than the formal statement of rights which many claimants assert was their only notice concerning the hearing. Scott, *supra* note 14, at 308-12.

tive hearing procedure presupposes informed and assertive individuals who need no special notice of their rights to an adjudication. The welfare claimant, however, is generally uninformed of his right to appeal and the procedure by which he may exercise this right.⁵¹ A mere statement that this right exists is clearly insufficient for the needs of welfare claimants. What is required is a recognition that unless every effort is made to apprise the recipient of the nature and availability of this remedy, the hearing cannot serve to protect basic rights.

A related consideration is the recognition of the necessity and significance of independent representation for the welfare client. It is difficult to maintain the position that a welfare recipient is capable of independently prosecuting an appeal involving interpretation of state and federal regulations with sufficient expertise to prevail over trained agency personnel. Yet the claimant, being fully aware of his inability to retain counsel himself, will rarely seek the services of an attorney on his own initiative.⁵² It is, therefore, the special responsibility of the caseworker to inform the client of the availability of free legal services, as well as to indicate the need for such representation during the hearing. In order to fulfill this duty adequately, the caseworker must be persuaded that the presence of an attorney prior to and during the hearing is essential to the best interests of his client. If he feels instead that the attorney is an unnecessary figure who will turn the hearing into a full-scale adjudication, he can hardly be expected to inform the claimant of the availability of and need for the presence of counsel during the appeal.⁵³

A further consideration which bears on the attitude toward an effective hearing process is the question of whether the caseworker regards the receipt of public assistance as a right to be properly demanded by those who are eligible or merely a grant which is extended to claimants by the agency because of its desire to alleviate poverty. If receipt of assistance is regarded as a right, it logically follows that an aggressive and

51. *Id.*

52. *Id.* at 346-49. The H.E.W. interpretations of the federal regulations recognize the importance of independent representation. "Because of the difficulties many recipients have in representing themselves in fair hearings, the welfare agency has a special responsibility to assist persons in being represented by others." U. S. DEPT OF HEALTH, EDUCATION AND WELFARE, APA FINANCIAL ASSISTANCE MANUAL, pt. 6, 60-30-20 (B).

53. It has been stated that many caseworkers don't like attorneys at the hearing because the lawyers make them look bad. The workers know the regulations, but are ignorant of the underlying policy of the law. Interview with George Stewart, Attorney, Legal Aid Clinic, in Ann Arbor, Michigan, Feb. 10, 1969.

determined effort to protect this right by recourse to the fair hearing should be encouraged and assisted in every respect. On the other hand, if assistance is viewed as a grant, then even though the right to appeal is recognized, it cannot be regarded as anything more than the further effort of the agency to treat each claimant fairly and equitably.

The final factor which is relevant to the formation of attitudes of caseworkers is the question of whether or not there exist institutional pressures which tend to discourage caseworkers from fully informing claimants of their rights and needs in a welfare hearing. If the caseworker feels that his career will be impaired if there are a large number of appeals filed against his decisions and that the agency prefers that disputes be resolved short of an appeal, regardless of his good intentions, this must affect his willingness to fulfill his responsibility to the claimant. The existence of agency pressures can be a powerful force in reducing the zeal with which the caseworker performs his function.

The expressed attitudes toward these five questions comprise those factors which together serve to indicate the attitudes of individuals toward an effective hearing process. A positive attitude toward each individual factor supports a favorable attitude toward the kind of appellate process deemed essential by the federal regulations, while negative reactions to one or more of these questions produces an attitude which is either ambivalent or unfavorable.

In addition to measuring existing attitudes toward the fair hearing, it is equally necessary to identify the way in which the caseworker perceives his role in the appellate process. It is significant to determine whether the caseworker perceives his relation to the client as that of an agent, serving his needs but not making his decisions, or whether he views the client paternalistically, as one to be guided to whatever decision the worker feels to be the best. Although often the best intentions may be the basis for the view that claimants must be led to the proper decision, such perceptions mean that the effectiveness of the hearing process, at least to the extent contemplated in *Goldberg* and enunciated in the federal regulations, is dependent to a significant degree on the attitudes of the individual caseworker. If in fact these attitudes are generally favorable, then the potential for a hearing process as contemplated in law can be largely realized. Alternatively, if the attitudes are generally unfavorable, the procedural rights of recipients are potentially jeopardized. Finally, if caseworker attitudes are largely unformed, undecided, or ambivalent, the impact on the hearing process may be dependent to a large

extent on the presence of variables which influence the formation of worker attitudes.⁵⁴

In order to determine whether one of these possibilities is most characteristic of caseworker attitudes and to ascertain whether the local administration of the welfare hearing process requires the increased concern and attention of the legal profession, a research study was undertaken, designed to measure attitudes in a random population of welfare caseworkers. The following sections outline the research procedure employed, the results of the study, and the implications that are suggested.

THE RESEARCH PROJECT

In order to obtain a measure of caseworker attitudes and perceptions, the research study undertook an analysis of a random sample of caseworkers throughout the country. The research design centered around a questionnaire distributed to the selected caseworkers. The questionnaire consisted of two principal sections. (See Appendix *infra*.) The first section required completion of a number of questions supplying demographic data and factual information about the individual caseworker, his state and local agency, the nature of his training, his familiarity with the hearing regulations, his experience in the hearing process, and the nature and extent of his contact with claimants.⁵⁵ In addition, questions were directed to determining the existence of published rules of procedure in the given state and to the existence of welfare rights organizations in the community.⁵⁶ The purpose of this section was to establish a frame of reference to provide the basis for an analysis of the variation in attitudes among the individual subjects of the study. Using a number of these variables, it was possible to identify several significant correlations with expressed attitudes.

The second part of the questionnaire employed a Likert-type scale⁵⁷

54. See text accompanying notes 60-65 *infra*.

55. Specifically, these questions established age, sex, location of the agency, nature of duties, length of time employed, length of training period and instruction in the appeals process, familiarity with state and federal hearing regulations, number of times involved in a hearing, case load, participation in the hearing, and the worker's view of such participation as requiring him to act as a friend of the claimant, neutral witness, or adversary. See Appendix *infra*.

56. In addition to these two questions, the subjects were also asked to supply from a range of possible alternatives their explanation for the relatively small number of hearings instituted by recipients. See Appendix *infra*.

57. This is a form of summated scale following the pattern devised by Likert in 1932. See SELLITZ, JAKODA, DEUTSCH & COOK, RESEARCH METHODS IN SOCIAL RELATIONS 366-70 (1962) [hereinafter cited as SELLITZ].

consisting of 28 statements relevant to the attitudes under investigation. (See Appendix *infra*.) The statements were either favorable or unfavorable to the specific factors which form the basis for attitudes toward the hearing process. The subjects were directed to indicate their degree of agreement or disagreement with each statement, with the choice of responses being: strongly agree, agree, undecided, disagree, and strongly disagree. Each response was given a numerical score indicating its favorableness or unfavorableness with a given factor involved in the hearing process.⁵⁸ The sum of the responses to individual statements produced a total score which represented the worker's position on a scale of favorable-unfavorable attitudes toward each individual factor. The scores for each factor were then totaled to give a final score which measured the individual's attitude toward the hearing process generally and his perception of his relation to his clients.

The use of such total scores as a basis for placing caseworkers on a scale is based on the rationale that the probability of agreement with any one of the favorable statements (or of disagreement with any of the unfavorable statements) in relation to those factors necessary to an effective hearing process varies directly with the degree of favorableness of the individual's attitude toward the fair hearing in general.⁵⁹ Consequently, it can be expected that a caseworker with a favorable attitude would respond favorably to most statements, one with an ambivalent attitude would respond unfavorably to some and favorably to others, and an individual with an unfavorable attitude would respond unfavorably to many statements.⁶⁰

The five factors that were used to determine attitudes toward the hearing process were those which were identified above as characteristics essential to an effective fair hearing. Specifically, they consisted of:

1. Recognition of the hearing process as an essential safeguard to insure the effective administration of public assistance.
2. Recognition of the necessity for a full and complete explanation of the right to a hearing, including recognition of the special

58. The responses were scored in such a way that a response indicative of the most favorable attitude was given the highest score. If the question was favorable to a given factor, five points were assigned if the worker "strongly agreed," four points if he "agreed," three if he was "undecided," two if he "disagreed," and one if he "strongly disagreed." If the question was unfavorable, the scoring was in reverse order. See Appendix *infra*.

59. SELLITZ, *supra* note 57, at 336.

60. *Id.*

needs and problems of comprehension and visibility experienced by claimants.

3. Recognition of the necessity of legal counsel or other independent representation in the hearing process, including the need for formal adjudicatory procedure.

4. The absence of a recognition of any agency pressures against the fulfillment by the caseworker of his responsibilities to the claimant, including the absence of any fear that the number of appeals filed had a bearing on future career opportunities.

5. Recognition of access to the hearing process and the receipt of public assistance in general as a right to be properly demanded by the welfare claimant.

The attitudes toward each of these essential factors were established by the scores derived from those statements which pertained to each factor. Thus, for example, the attitude concerning the first consideration—the need for an effective fair hearing process—was based on the total score derived from statements 1, 3, 5, 6, 20, and 22. (See Appendix *infra*.)⁶¹ Finally, the sum of the scores for each specific attitude produced the measure of general attitudes toward the hearing process. A similar procedure was employed to produce a perception scale⁶² ranging from the caseworker's perception of his role as creating an agent-client relationship to one requiring a paternalistic relationship. Together, the final scores on both the attitude and perception scales served as the test for the hypotheses developed above.⁶³

The subjects for the study were 150 caseworkers selected from throughout the United States. Because the hearing process varies within each state, the questionnaires were distributed equally, three to a state.⁶⁴ The questionnaires were mailed initially to the Social Welfare

61. See Appendix *infra*. Similarly, the remaining statements were used to determine the attitudes toward the four remaining factors, with the sum of the scores on those statements relating to a given factor comprising the attitude score for that factor. Thus, the score for the second factor—the necessity for full explanation—was the sum of the scores of statements 2, 8, 9, 16, 27, and 28. The score for the third factor—institutional pressures—was comprised of statements 4, 17, and 18, while the fourth—the need for an attorney—consisted of 10, 11, 12, 21, and 26. Finally, the fifth attitude score—the right to public assistance—was based on statements 19 and 23. See Appendix *infra*.

62. The statements which together comprised the perception scale were 7, 13, 14, 15, 24, and 25.

63. The maximum range on the attitude scale was from 110 to 22 while the maximum range on the perception scale ran from 30 to 6.

64. The sample was distributed on March 14, 1969. All completed responses were returned by April 12, 1969.

Agency in each jurisdiction. They in turn distributed the questionnaires to three caseworkers in their state selected on the basis of age, length of employment, and locality⁶⁵ The questionnaires were then returned directly by the individual subjects. Through the use of such a sampling procedure, it was possible to measure the relation of a number of variables to the expressed attitudes. A national population for the sample was necessary in order to determine the effect of worker attitudes in all jurisdictions, thereby supplementing the purposefully broad scope of the present study

THE RESULTS OF THE RESEARCH STUDY

A Demographic Profile

From the 150 questionnaires that were distributed, returns were received from 106 welfare caseworkers, representing a 71 percent rate of return.⁶⁶ The 106 workers who responded to the study were distributed throughout 40 states and 98 localities. The respondents were relatively equally distributed geographically throughout the country. 35 were from the West, 22 from the Midwest, 22 from the East, and 27 from the South. The distribution between urban and rural environments was also balanced. Fifty-four of the respondents were employed in offices located in urban areas while the remaining 52 worked either in rural or county offices or in small cities of under 50,000 population.

The caseworkers varied substantially in their backgrounds and experience, but certain dominant characteristics were discernable.⁶⁷ In general the respondents were predominantly female—80 women and only 26 men. In addition, they were relatively young. While their ages ranged from 23 to 68, the median age of all respondents was only 35. In terms of length of employment, the median respondent had been working about four years with the range running from five months to 40 years. Almost all of the workers had some form of training upon first

65. In view of the fact that distribution was accomplished through the cooperation of the state agencies, the possibility exists that this factor may affect the randomness of the sample. Because of this (and the 71 percent return on the questionnaire, *see* note 66 *infra*), it is not possible to make a statistically significant analysis based on the population as a whole. It is, however, more than sufficient to support the socially significant conclusions necessary for this study

66. Although a 71 percent return is insufficient to allow one to make a statistically significant analysis, it still will support socially significant conclusions. *See* note 65 *supra*.

67. The questionnaires from which this demographic data was obtained are on file in the offices of the William and Mary Law Review.

joining the staff of the agency. The average training period was two months, but many individuals had up to six months on the job training. In response to the more relevant question of whether this training included instruction in hearing procedure, 50 workers indicated that they had received such instruction, but the remainder were given no initial background concerning the hearing process and the role they would have to play in the appellate procedure.

In response to the question of their familiarity with the hearing provisions of their state welfare manual, 87 percent indicated at least passing familiarity with the hearing requirements applicable in their jurisdiction; of this group, 76 workers had on at least one occasion been directly involved in a welfare hearing. Taking the group as a whole, the number of hearings participated in ranged from zero to 40, with the average number of four per respondent. Based on this data, it is clear that there is general familiarity among caseworkers with respect to both the state and federal hearing regulations as well as with the actual operation of the appeals process.⁶⁸

Asked to supply their reason for the low number of hearings instituted by recipients, 57 percent attributed the low rate to the fact that disputes are settled informally without recourse to the fair hearing; 5 percent felt that it was due to the fact that the workers had done such a good job and made few errors; 13 percent supplied a variation of other responses; while the remaining 25 percent of the respondents indicated that in their opinion the low appeal rate was due to the fact that the clients are generally uninformed of their right to appeal and hesitate to request a hearing. In response to a question asking the respondents to identify how they viewed their role during the hearing, 47 workers stated that during the hearing they attempted to act as a neutral witness, 26 viewed their role as a friend, 9 as an adversary, and the remaining 19 cited various other roles.

The final two variables involved the question of established rules and recipients organization. With respect to the question of whether their state agency had promulgated formal rules of procedure to govern conduct prior to and during the hearing, 48 percent indicated that some formal procedure had been established in their jurisdiction, while the remaining 52 percent stated that the process was conducted informally. As to the question of whether or not there was an established welfare

68. This familiarity extends to the conduct of the hearing itself. Ninety-seven of the 106 respondents indicated that in their state the caseworker participated directly during the conduct of the hearing before the hearing officer.

rights group in the community, 64 caseworkers reported that some form of organization existed, while the remaining 42 indicated that no such efforts at group organization had yet been undertaken.

This demographic data has only passing significance when examined alone. But when the data is correlated with expressed attitudes toward the hearing process, it is possible to reach conclusions as to which of these variables appear to influence hearing attitudes and perceptions and the degree to which they can be regarded as a determining factor in the formation of these attitudes.

The Attitude Scale

The central purpose of the attitude scale is to attempt to isolate the attitude of the welfare caseworker toward the hearing process as a formal procedure providing complete decisional review and elaborate safeguards of clients' rights. To make such a determination the attitude of the respondents towards those factors deemed essential to a fair hearing as contemplated in the federal regulations was established.⁶⁹ The total score based on these factors produced the overall attitude rating.

1. *The Essential Nature of the Hearing Process.* Recognition of the fact that the hearing process is essential to the effective administration of public assistance, including the realization that public assistance is potentially subject to abusive practices and policies and that the hearing process can and should be the means by which these practices are controlled, is an essential component of a favorable attitude toward the hearing process. The results of the study indicated that taken individually the large majority of caseworkers regarded the hearing process as an important component in the administration of public welfare. (See Table 1-A.)

TABLE 1-A
INDIVIDUAL ATTITUDES RELATIVE TO THE ESSENTIAL
NATURE OF THE HEARING PROCESS⁷⁰

Attitudes	Range of Scores	Number of Respondents	Percentage
Essential	30-25	14	13%
Important	24-19	59	56%
Undecided/Ambivalent	18-13	33	31%
Unessential	12- 6		

69. See notes 48-54 *supra* and accompanying text.

70. The range of scores was determined on the following basis: The highest possible

By placing the respondents on a scale based on the sum of the scores for those statements relevant to this factor, it is possible to establish the degree of recognition of the necessity for the hearing process exhibited by each caseworker. As indicated above, 14 respondents regard the hearing process as an essential component of an effective system of public assistance. The majority of the workers fall into a second category, recognizing that the hearing process is important but not regarding it as essential. The final 31 percent expressed attitudes which were incapable of accurate categorization, being either undecided or ambivalent. Significantly, however, not one of the workers felt that the hearing process was unnecessary for effective welfare administration.⁷¹

If an attitude score for this factor is derived from a computation of the average scores of all respondents instead of individually the following results are found:

TABLE 1-B
AVERAGE ATTITUDES RELATIVE TO THE ESSENTIAL
NATURE OF THE HEARING PROCESS

Attitude Scale	Range of Scores Per Statement	Average Score Per Statement ⁷²						Total Range of Scores	Total Average Scores
		#1	#3	#5	#6	#20	#22		
Essential	5-4		4.3					30-25	
Important	4-3			3.1	3.4		3.9	24-19	20.2
Undecided/Ambivalent	3-2	2.7				2.8		18-13	

score on the six questions comprising this factor was 30, indicating that the respondent was strongly favorable on each question. (See Appendix *infra*, statements 1, 3, 5, 6, 20, and 22.) The designation "Essential" was given to a total score which fell between a strongly favorable response (30) and a favorable response (25) on the scale. The designation "Important" was given to a total score between favorable (24) and undecided (18). The designation "Undecided/Ambivalent" was given to a total score between undecided (18) and unfavorable (12), and the designation "Unessential" was given to a total score between unfavorable (12) and strongly unfavorable (6). Any such designations are, of course, arbitrary to some extent. The assumption here is that any total score above a given response on the scale should be classified as indicative on the next higher response, i.e. a score of 14 being greater than unfavorable (12), must, therefore, be classified as undecided.

71. The workers as a whole seemed to recognize the need for some form of hearing process, although they were not nearly as uniformly agreed on the form the hearing process should take.

72. The text of those statements which produced the score indicating attitudes toward the essential nature of the hearing process can be found in the Appendix (Statements 1, 3, 5, 6, 20, and 22) *infra*.

Table 1-B demonstrates that taken as an average, the total scores for all respondents derived from scores on each of the statements relative to the necessity of the hearing process falls within the lower range of the "Important" category. This tends to confirm what was concluded above; as an average, the workers regard the hearing process as important, and they are not disposed to ignore it. While most workers do not feel strongly about the necessity of the hearing process as a control of agency action, the prevailing attitude on this factor must be characterized as generally favorable.

2. *The Necessity for Full Explanation.* The second factor comprising the attitudes of the respondents toward the hearing process was the recognition of the need to explain fully the right to a hearing to the client. This requires, in addition, a recognition of the special needs and problems, especially in terms of comprehension and visibility, peculiar to welfare recipients. When the results were computed individually in order to determine the attitude score of each respondent toward this factor, the outcome was significantly more ambivalent than that found in the previous analysis.

TABLE 2-A
INDIVIDUAL ATTITUDE RELATIVE TO THE NECESSITY
FOR FULL EXPLANATION TO CLAIMANTS⁷³

Attitudes	Range of Scores	Number of Respondents	Percentage
Necessary	30-25	15	14%
Important	24-19	37	35%
Undecided/Ambivalent	18-13	50	47%
Unnecessary	12- 6	4	4%

Forty-seven percent of the respondents demonstrated an ambivalent attitude toward the importance of full explanation of the right to a hearing and the process by which it could be achieved, while four percent felt that such an explanation was not necessary. Most of this group indicated that claimants in general did not require such an explanation in order to insure that their rights were protected, while a number also indicated that a full explanation, even assuming it was needed, was not a

73. The range of scores was determined on the same basis as outlined in Table 1-A; see note 70 *supra*. Statements used were 2, 8, 9, 16, 19, and 28, see Appendix *infra*.

good policy for the worker to follow.⁷⁴ Of the remaining respondents, 35 percent felt that a full explanation was important but not necessary to the hearing process, while the final 14 percent felt strongly that such an explanation was a necessary prerequisite to guarantee that claimants would have free access to the fair hearing. In sum, these results show that a majority of the caseworkers held attitudes which fell short of a recognition of the necessity of a full explanation of the right to a hearing and its implications for the recipient. These workers were largely undecided about the propriety of such detailed explanation, indicating that their attitude was largely unformed.

By deriving an average score for the sample based on the scores for the relevant individual statements, these same results were confirmed:

TABLE 2-B
AVERAGE ATTITUDE RELATIVE TO THE NECESSITY
FOR FULL EXPLANATION TO CLAIMANTS

Attitude Scale	Range of Scores Per Statement	Average Score Per Statement ⁷⁵						Total Range of Scores	Total Average Score
		#2	#8	#9	#16	#27	#28		
Necessary	5-4							30-25	
Important	4-3		4.6				3.3	24-19	
Undecided/Am-bivalent	3-2	3.2		2.8	2.7	2.7		18-13	18.6

The average score for all respondents indicates that the average respondent is uncertain whether or not a full explanation to claimants is necessary to the maintenance of those safeguards established as their right under federal law.

3. *Recognition of the Existence of Institutional Pressures.* The third factor which produces attitudes toward the hearing process is the question of whether or not the caseworker feels subject to agency pressures of any kind to discourage appeals from his decisions. Whether or not such institutional pressures actually exist is not the subject of this in-

⁷⁴ Four of the respondents had scores on this factor which ranged so low that their attitudes could be described properly as feeling that full explanation was not only unnecessary, but harmful.

⁷⁵ The text of those statements which produced the average score indicating attitudes toward full explanation can be found in the Appendix (Statements 2, 8, 9, 16, 19, and 28) *infra*.

quiry. The question is whether the caseworker feels that such pressures exist. The results indicated that if such pressures do exist, they are not perceived to any significant degree, or alternatively not admitted by the individual worker.⁷⁶

TABLE 3-A
INDIVIDUAL ATTITUDES RELATIVE TO THE EXISTENCE
OF INSTITUTIONAL PRESSURES ON WORKERS⁷⁷

Attitudes	Range of Scores	Number of Respondents	Percentage
No Pressure	15-13	80	76%
Slight Pressure	12- 9	22	20%
Strong Pressure	8- 3	4	4%

Over 75 percent of the respondents felt no pressure of any kind to discourage formal appeals. This group did not feel that the number of hearings instituted or the fact that the worker encouraged appeals would have a deleterious effect on their opportunity for career advancement.

A much smaller number of workers, comprising about 20 percent of the sample returns, expressed attitudes demonstrating that they did recognize the existence of some pressure, though slight, to reduce the number of appeals. However, only four percent of the respondents felt that their careers would be endangered by a large number of hearing requests from clients. Outside of this small group, most individuals felt that no damaging results would follow should they actively encourage their clients to appeal adverse decisions.

These statistics, based on individual worker attitudes, are similarly reflected in the average scores for all workers on the question of agency pressure. (See Table 3-B.)

76. The author recognizes that the major flaw in the sample revolves around the cooperation required of the state agency. Since this factor was uncontrolled, any inferences on this point are subject to question.

77. The range of scores was chosen on the following basis: A designation of "No Pressure" was given to a total score on the three questions comprising this factor (Statements 4, 17, and 18, Appendix *infra*), which fell between the response "Strongly Agree" and "Agree." A designation of "Slight Pressure" was given to those total scores falling between "Agree" and "Undecided." A third designation of "Strong Pressure" was given to those scores less than "Undecided."

TABLE 3-B
AVERAGE ATTITUDE RELATIVE TO THE EXISTENCE
OF INSTITUTIONAL PRESSURES ON WORKERS

Attitude Scale	Range of Scores Per Statement	Average Score Per Statement ⁷⁸			Total Range of Scores	Total Average Score
		#4	#17	#18		
No Pressure	5-4	4.8	4.4		15-13	13.1
Slight Pressure	4-3			3.9	12- 9	
Strong Pressure	3-1				8- 3	

As the above Table demonstrates, the workers on the average feel no pressures which constrain freedom to encourage appeals. Whether or not any agency pressure exists, it seems clear that it is not perceived to any significant degree by the average welfare caseworker.

4. *The Necessity of Independent Representation.* The fourth component of general attitude toward an effective hearing process is the question of the necessity of participation by attorneys or other independent representatives to insure claimants a fair hearing. This factor

TABLE 4-A
INDIVIDUAL ATTITUDES RELATIVE TO THE
NECESSITY FOR AN ATTORNEY⁷⁹

Attitude	Range of Scores	Number of Respondents	Percentage
Necessary	25-21	8	8%
Important	20-16	47	44%
Undecided/Ambivalent	15-11	44	42%
Unnecessary	10- 5	7	6%

78. For the text of those statements which produced the average score indicating attitude toward institutional pressures, see the Appendix (Statements 4, 17, and 18) *infra*.

79. The range of scores was selected on the following basis: The designation "Necessary" was given to a total score for the five questions included in this factor (Statements 10, 11, 12, 21, and 26, Appendix *infra*), which ranged from a strongly favorable response (25) to a favorable response (20). The designation of "Important" was given to a total score falling between a favorable response (20) and undecided (15). The designation of "Undecided/Ambivalent" was given to a total score which fell between undecided (15) and unfavorable (10). The designation of "Unnecessary" was given to a total score falling between an unfavorable response (10) and strongly unfavorable (5). See note 70 *supra*.

includes the recognition of the need for a formal adjudicatory procedure in order to make the hearing process an effective remedy for claimants. The study attempted to ascertain the reaction of the respondents to the presence of an attorney during the hearing as well as their view as to the ability of claimants to prosecute adequately an appeal independent of outside assistance. The combination of their position on these questions resulted in an attitude scale measuring caseworker recognition of the need for and contribution of the attorney to the hearing procedure.

The respondents' scores exhibited a full range of attitudes concerning the need for an attorney. Eight percent of the sample indicated that in order for claimants fully to protect their interests the presence of legal counsel at and during the fair hearing was a necessity. Forty-four percent of the workers indicated that an attorney or other representative was often important to the claimants but not always a necessary precondition to the successful prosecution of an appeal. A large group of workers—42 percent of the sample—expressed ambivalent attitudes toward the need for and effect of independent representation during the hearing process, while the remaining six percent felt that the attorney was an unnecessary factor whose presence during the hearing process did not contribute to the client's interests.

In assessing attitudes toward attorneys based on the average score for all respondents, similar results were found. (See Table 4-B.)

TABLE 4-B
AVERAGE ATTITUDE RELATIVE TO THE NECESSITY
FOR AN ATTORNEY

Attitude Scale	Range of Scores Per Statement	Average Score Per Statement ⁸⁰					Total Range of Scores	Total Average Score
		#10	#11	#12	#21	#26		
Necessary	5-4		4.0				25-21	
Important	4-3	3.0			3.7		20-16	
Ambivalent	3-2			2.6		2.7	15-11	15.9
Unnecessary	2-1						10-5	

80. For the text of those statements on which the scores for attitudes toward the necessity for an attorney were based, see the Appendix (Statements 10, 11, 12, 21, and 26) *infra*.

As indicated in Table 4-B, the average caseworker views the presence of an attorney or other representative during the hearing process with some ambivalence, feeling that the attorney does have in many instances an important role to play but at the same time being unsure that his presence is always necessary and/or desirable.

5 *The Right to Public Assistance.* The final factor essential to obtaining a measurement of general attitudes toward the hearing process is the question of whether access to the fair hearing and the receipt of public assistance generally is viewed as a right to be properly, and if necessary vigorously, demanded by eligible claimants, or is more properly characterized as a grant to recipients made available by the public welfare agency which should be accepted on whatever terms the agency deems advisable. The study attempted to determine whether caseworkers recognized a basic right to assistance payments, and whether their views included acceptance of the vigorous prosecution of the right to assistance payments by whatever means, including the fair hearing, that are available. (See Table 5-A.)

TABLE 5-A
INDIVIDUAL ATTITUDE RELATIVE TO THE RIGHT TO
PUBLIC ASSISTANCE AND A FAIR HEARING⁸¹

Attitudes	Range of Scores	Number of Respondents	Percentages
Absolute Right	10-9	44	41%
Qualified Right	8-7	40	38%
Undecided/Ambivalent	6-5	19	18%
No Right	4-2	3	3%

Forty-one percent of the respondents recognized that welfare recipients have a right to public assistance and a fortiori to a fair hearing to vindicate these rights. In addition, 38 percent indicated their belief that claimants did have some rights with respect to welfare payments, but

81. The range of scores for this factor was determined on the following basis: The designation of "Absolute Right" was given to a total score on the two questions comprising this factor (Statements 19 and 23, Appendix *infra*), which fell between a strongly favorable response (10) and a favorable response (8). The designation of "Qualified Right" was given to a total score falling between favorable (8) and undecided (6). The designation of "Undecided/Ambivalent" was given to those scores falling between undecided (6) and unfavorable (4). Finally, the designation of "No Right" was given to a total score between unfavorable (4) and strongly unfavorable (2).

their attitudes were sufficiently qualified to indicate that a recognition of the existence of a right did not necessarily include a recognition of the validity of vigorous prosecution of that right. Of the remaining workers, 19 respondents were ambivalent or undecided, while the final three did not recognize any independent right to public assistance payments. (See Table 5-B.)

TABLE 5-B
AVERAGE ATTITUDE RELATIVE TO THE RIGHT TO
PUBLIC ASSISTANCE AND A FAIR HEARING⁸²

Attitude Scale	Range of Scores Per Statement	Average Score Per Statement		Total Range of Scores	Total Average Score
		# 19	# 23		
Absolute Right	5-4	4.5		10-9	
Qualified Right	4-3		3.4	8-7	7.9
Undecided/Ambivalent	3-2			6-5	

The average caseworker reflects the same qualified attitude that is characterized by many of the individual respondents. On the average, caseworkers strongly feel that recipients have independent rights with respect to public assistance and specifically the hearing process, but they are to some extent unwilling to accept the consequences of the concept of absolute right. It might be said that caseworkers perceive public assistance as a mix of both rights and privileges. The eligible recipient is entitled to receive assistance payments, but in view of the philosophic underpinnings of public welfare, the recipient should perhaps be circumspect in his attempts to receive such payments.

6. *Overall Attitude Toward the Fair Hearing.* By taking the expressed attitudes of the caseworkers toward each specific factor, it is possible to establish the overall attitudes of the respondents toward the hearing process. The general attitude is comprised of the varying attitudes toward the specific factors which contribute to an effective hearing procedure as contemplated by the federal regulations. Such a measure does not indicate any more than the sum of these specific factors, but it does provide a basis for assessing the impact of the various individual attitudes previously discussed.

82. See note 81 *supra*.

If the individual respondents are placed on an attitude scale ranging from favorable to unfavorable attitudes toward the hearing process in general, the results indicate that although many of the attitudes concerning the specific factors are clearly held, the predominant general attitude is ambivalent or undecided.⁸³ (See Table 6-A.)

TABLE 6-A
INDIVIDUAL ATTITUDES RELATIVE TO THE
HEARING PROCESS IN GENERAL⁸⁴

Overall Attitude	Range of Scores	Number of Respondents	Percentages
Generally Favorable	110-82	30	28%
Undecided/Ambivalent	81-52	72	68%
Generally Unfavorable	51-22	4	4%

More than two-thirds of the responding sample population expressed attitudes toward the specific factors which in combination resulted in an ambivalent attitude toward the hearing process in general. This is not to say that the same attitudes toward each factor were expressed by the individuals falling into this category. Rather, all possessed varying attitudes toward each essential factor. But when these attitudes were combined the final result was similar—due either to conflicting opinions or indecision—their attitude toward the hearing process was generally ambivalent or unformed. This uncertainty was caused in part by the fact that many of these respondents, although recognizing the need for one or more of the specific factors, did not perceive the need for others. The remaining respondents exhibited more polarized attitudes toward the fair hearing. Twenty-eight percent of the caseworkers expressed generally favorable attitudes by positive reaction to each of the specific essentials. On the other hand, four percent of the total sample were equally clear in their expression of a generally unfavorable attitude toward an effective fair hearing procedure.

83. The determination was made to weigh each of the factors equally rather than to attempt to impose value judgments as to which may contribute more significantly to overall attitudes.

84. The range of scores was determined on the following basis: The total possible range for the 22 questions comprising overall attitudes ran from 110 to 22. This total range was divided into thirds to approximate the three possibilities (generally favorable, ambivalent, generally unfavorable) postulated initially.

Computing general attitudes on the basis of average rather than individual scores reflects a similar result. The average caseworker, derived from the sum of the scores for all the respondents, falls in the ambivalent category characterized by the majority of individual respondents, with an average score of 75.6.⁸⁵ This ambivalent attitude is the result of varying positions with regard to the five essential components of the hearing process. On the average, moderately favorable attitudes were exhibited toward the right to public assistance, the absence of agency pressures, and the need for an effective hearing procedure, while generally ambivalent attitudes were expressed toward the necessity for independent representation and for full explanation of the hearing process to the claimants.

This analysis of the attitudes of the caseworkers in the sample lends support to the assertion that of the three possible attitudes postulated earlier,⁸⁶ the most accurate characterization is that caseworker attitudes toward the fair hearing as contemplated by *Goldberg* and the federal hearing regulations are generally ambivalent, undecided, or unformed. Whether any judgments can be drawn from this analysis depends to some extent on the degree to which these attitudes exert an influence on the welfare recipient.

The Perception Scale

Having determined the range of attitudes exhibited by caseworkers, it is necessary to examine the respondents' perception of their relationship with the recipients. Specifically, it is relevant to examine the extent to which caseworkers perceive their relationship to claimants as paternalistic rather than as agent-client. The assumption is made that if the workers are found to perceive their relation paternalistically, the tendency will be greater to impress their views of the hearing process on recipients. The perception scale is based on the responses to those statements relative to worker-client relationships. From the total scores for these statements the respondents were placed on a scale ranging from strongly perceived as agent to strongly perceived as paternalist. The results derived from the sample indicate that the paternalistic perception is far stronger than the agent perception. (See Table 7-A.)

Sixty-two percent of the respondents indicated that they perceived their relationship to the recipient paternalistically. Of this group, two

85. See Table 6-A *supra*. The same conclusion is reached by taking the median score for all caseworkers, which is 75.

86. See note 84 *supra*.

TABLE 7-A
INDIVIDUAL PERCEPTIONS OF THE WORKER-CLIENT
RELATIONSHIP⁸⁷

Perceptions	Range of Scores	Number of Respondents	Percentage
Strongly Agent	30-25	2	2%
Slightly Agent	24-19	38	36%
Slightly Paternalistic	18-13	64	60%
Strongly Paternalistic	12- 6	2	2%

percent held this perception very strongly, the rest to a lesser degree. This indicated a feeling that claimants in general were incapable of making intelligent decisions on their own even when fully informed, and that consequently their opinions and decisions should be influenced by the worker.⁸⁸ By viewing their role as requiring them to guide the recipient to the proper decision, these workers evidenced a strong disposition to influence claimants to adopt those attitudes expressed by the worker himself. The remaining 38 percent of the sample viewed their relationship to clients more nearly as an agent to serve those interests that the recipient himself felt essential. Of this latter group, two percent held this view to a strong degree while the other 36 percent did so to a lesser extent.

A similar analysis can be made by using the average score for all respondents on the perception scale.⁸⁹ (See Table 7-B.)

87. The range of scores was chosen on the following basis: The value of 5 was given to a strongly favorable agent perception and the value of 1 to a strongly favorable paternalistic perception. The total possible score, therefore, for the six questions comprising this scale ran from 30 to 6. The designation of "Strongly Agent" was given to all total scores falling between strongly favorable agent (30) and favorable agent (25). The designation of "Slightly Agent" was given to those scores falling between favorable agent (24) and undecided (18). The designation of "Slightly Paternalistic" was given to those scores falling between undecided (18) and favorable paternalistic (13). The designation of "Strongly Paternalistic" was given to those scores falling between favorable paternalistic (12) and strongly paternalistic (6).

88. Whether or not this perception was in fact a reflection of reality is not the issue here. No attempt is made in the study to place a value judgment on which perception is favorable. The sole assumption is that this perception results in the imposition of caseworker attitudes on the welfare recipient.

89. Such a score is derived from the sum of the average responses of the caseworkers for each statement relative to self-perception. For the text of these statements see Appendix (Statements 10, 11, 12, 21, and 26) *infra*.

TABLE 7-B
AVERAGE PERCEPTIONS OF THE WORKER-CLIENT
RELATIONSHIP

Perception Scale	Range of Scores Per Statement	Average Score Per Statement						Total Range of Scores	Total Average Score
		#7	#13	#14	#16	#25	#26		
Strongly Agent	5-4						4.2	30-25	
Slightly Agent	4-3			3.4				24-19	
Slightly Paternalistic	3-2	2.6	2.6		2.5	2.3		18-13	17.6
Strongly Paternalistic	2-1							12-7	

The average perception of the respondents indicates that the predominant view is paternalistic. The average respondent perceives his relationship to his client as requiring him to direct and control the responses of his clients. Thus, taking the respondents' perceptions either individually or on the average, the results indicate a clear trend toward the paternalistic end of the scale. The conclusion is inescapable that workers feel that clients are incapable of perceiving their own interests and must be guided in the direction which the caseworker feels most beneficial. It may be that these perceptions are derived from the best of motives or are, in fact, a reflection of reality; however, the existence of such a perception increases the probability that worker attitudes will be transferred to the clients.

The combination of these perceptions with prevailing attitudes leads to the conclusion that in a significant number of instances the welfare recipient will himself tend to view the hearing process ambivalently. This is not to say that such attitudes will prevent the process from being utilized to control agency action or to correct inaccurate factual determinations. On the contrary, the results of the study clearly indicate that the vast majority of caseworkers are not antagonistic to the hearing process. It does imply, however, that the reality of procedural due process in this context may not approximate the kinds of formal adjudicatory procedures outlined in *Goldberg*¹ and reflected in the federal regulations.

Correlation of Attitudes and Certain Variables

Necessary to an analysis of worker attitudes is the identification of those variables which appear to have the most influence on the forma-

tion of hearing attitudes. This is particularly true where, as here, worker attitudes are predominantly characterized as ambivalent or unformed. It is beyond the scope of this study to make causal judgments concerning the variations in individual views of the hearing process. However, it is possible to identify those factors which seem to have some influence on the kind of attitude held by an individual worker.

One of the variables which seems to have a significant effect on the attitude of individual workers is evidenced by the correlation which appears to exist between the age of the worker and his attitude toward the fair hearing. (See Table 8-A.)

TABLE 8-A
CORRELATION BETWEEN ATTITUDE AND AGE GROUPINGS

Age	25 Years or Less	26 to 30 Years	31 to 45 Years	46 Years and Over
Number of Respondents	24	34	24	24
Average Attitude Score	84.4	77.8	71.2	70.4

Comparison among the average stated attitudes for the varying age groups of the respondents indicates that the younger the worker, the more favorable his attitude is likely to be toward the hearing process. Those respondents whose ages were 25 or less had an average score of 84.4, while the attitudes were progressively less favorable among each succeeding age group, reaching a low of 70.4 for those respondents whose ages were 46 and over. The conclusion that is indicated by these results is that the younger the caseworker, the greater the probability is that his attitude toward the hearing process will be more favorable. It is possible, however, that age alone is not the significant factor, but that the length of employment is also a relevant variable. Since the younger workers have been employed for a shorter period of time, they would perhaps have more favorable attitudes than the older workers who had been employed for a longer period.

The correlation between attitude and length of employment tends to confirm this hypothesis. Those workers who have been employed with the agency two years or less reflect the most favorable attitude of all the sample, slightly more favorable than the three to five-year group and significantly more favorable than the attitude of those workers with six or more years experience. (See Table 8-B.)

TABLE 8-B
CORRELATION BETWEEN ATTITUDE AND
LENGTH OF EMPLOYMENT

Length of Time Employed	2 Years or Less	3 to 5 Years	6 Years or More
Number of Respondents	42	31	33
Average Attitude Score	78.5	76.5	71.6

The evidence indicates a strong correlation between length of employment and attitudes, with the average attitude becoming markedly less favorable as the tenure of the workers increased.

By correlating age and length of employment, the results indicate that both of these factors tend to influence attitudes to some degree.⁹⁰ Regardless of which is the stronger correlation, it is clear that the younger, less experienced workers tend to have a more favorable attitude toward the fair hearing, and that as the respondents grow older and more experienced their attitudes toward an effective hearing process tend to harden and become less favorable.

In addition to age and experience, another variable which appears to influence attitudes to some degree is the location of the local agency—whether in an urban or rural community as well as the geographic section of the country. By comparing the respondents employed in urban

90. When both age and length of employment are controlled the following results are reached:

CORRELATION BETWEEN ATTITUDES AND AGE AND
LENGTH OF EMPLOYMENT

LENGTH OF EMPLOYMENT	AGE							
	25 Years or Less		26-30 Years		31-45 Years		46 Years and Over	
2 years or less	21	83	16	79.6	3	74	.	.
3 to 5 years	3	82	16	77.7	7	77	7	76.5
6 years or more	.	.	2	69	14	70.4	17	73
	No. of Respond- ents	Average Attitude Score	No. of Respond- ents	Average Attitude Score	No. of Respond- ents	Average Attitude Score	No. of Respond- ents	Average Attitude Score

areas with those working in rural or small communities, there is a significant variation in expressed attitudes. The urban workers appear to have significantly more favorable responses to fair hearings than those working in rural areas or small towns whose average attitude is significantly less favorable. (See Table 8-C.)⁹¹

TABLE 8-C
CORRELATION BETWEEN ATTITUDE AND URBAN/RURAL LOCALE

Location	Urban	Rural or Small City
Number of Respondents	54	52
Average Attitude Score	80.1	71.4

In addition to the urban-rural comparison, it is also possible to compare average score based on the geographical location of the respondents. Although the average scores of those workers from the Midwest and the West are roughly equivalent, there is a significant variation between the workers from the South and those located in the East. The respondents from the eastern section of the country scored significantly higher than those in the other regions, while the average southern caseworker indicated less favorable attitudes than those from other areas. (See Table 8-D.)

TABLE 8-D
CORRELATION BETWEEN ATTITUDE AND GEOGRAPHICAL LOCATION

Geographic Region	South	Midwest	West	East
Number of Respondents	27	22	35	22
Average Attitude Score	71.5	74.7	75.6	82.4

Consequently, the locality variable does appear to have some relation to overall attitude toward the hearing process. Workers located in urban areas in the East exhibit the most favorable attitudes while those from the rural South show significantly less favorable responses.

Another factor which may have some bearing on expressed attitudes is whether or not the respective state agency has promulgated formal

91. The Urban/Rural correlation does not seem to be a reflection of the age or experience variables discussed above. The median age of the urban respondents was 33 and that of the rural respondents was 37. The median length of employment for both groups was four years.

procedural guidelines for fair hearings as required by the federal regulations, or whether the hearing process is conducted through informal procedures. Although the relation does not appear as strong as with other variables, a correlation of some degree appears to exist between attitudes and the existence of formal hearing procedure. In those states which have published and established rules governing the conduct of the parties prior to and during the hearing, the workers appear to have a more favorable attitude than in those states where an informal procedure is followed. Although the variation in scores is not dramatic, the existence of formal procedure cannot be entirely disregarded as a relevant factor in the development of more favorable responses to welfare hearings. (See Table 8-E.)

TABLE 8-E
CORRELATION BETWEEN ATTITUDE AND PUBLISHED RULES

Form of Procedure	Formal Rules	Informal Procedure
Number of Respondents	51	54
Average Attitude Score	78.3	73.5

The final variable which seems to affect worker attitude is the existence of a recipients' organization or a welfare rights group in the community. In the 64 communities where some form of recipients' organization has been formed the average attitude score indicates a more favorable attitude toward the hearing process than in those jurisdictions without such organizations. (See Table 8-F)⁹²

TABLE 8-F
CORRELATION BETWEEN ATTITUDE AND WELFARE
RIGHTS ORGANIZATIONS

Established Organization	Yes	No
Number of Respondents	64	42
Average Attitude Score	78.4	71.9

92. It is entirely possible that the differential expressed with respect to the existence of welfare rights organizations is only a reflection of the Urban/Rural and Geographic Location variables discussed above (See note 91, *supra*); 73 percent of the welfare rights organizations were located in urban areas, while 68 percent were either in the East or the West.

These last two variables do not affect attitudes to such a degree that causal relations can be posited, but the fact remains that a significant variation does exist. Based on these variables, it can be argued plausibly that the establishment of formal rules of procedure to guide both workers and recipients, and the formation of recipients' organizations create an atmosphere which tends to produce more favorable responses to the hearing process by the welfare caseworker. Whether or not this relationship can be statistically established, the trend evident here, as well as the apparent hardening of attitudes with increased age and tenure, are considerations that should be seriously regarded by those attempting to create a more effective and accessible fair hearing procedure.

ANALYSIS AND CONCLUSIONS

The results of the research study give some significant indication of the prevailing kinds of caseworker attitudes toward the hearing process. On the basis of the sample returns as a whole, it can fairly be concluded that while a significant number of workers possess favorable attitudes toward the hearing process and the extent of unfavorable attitudes is insignificant, the prevailing attitude is ambivalence and indecision. Perhaps this is not at all surprising. Welfare caseworkers are not legally trained and cannot be expected to reflect the kinds of sensitivity to formalized adjudicatory procedures so beloved by the legal profession. Furthermore, it must be recognized that their attitudes and perceptions might well be grounded on a far better understanding of the reality of the problem of welfare administration and the most effective means of securing a resolution of conflicting claims.

The fundamental fact remains, however, that the desirability of a full-scale formal adjudication is no longer open to question. The real impact of *Goldberg* in this context has not been to cause an extensive remodeling of hearing procedures; on the contrary, the federal hearing regulations prior to *Goldberg* provided for all the fundamental requirements of procedural due process which the Supreme Court determined were constitutionally mandatory. Rather, the effect has been to render moot any further discussion of the most effective means of controlling agency behavior. Full scale, formalized adjudicatory procedures are now part of the umbrella of constitutional due process, and at least from the perspective of the legal profession this imposes some obligation to attempt their implementation in practice. If, in fact, such procedures are to have validity apart from their theoretical formulation, it would

seem that more is required than neutrality or indecision. The unique position of welfare recipients in the administration of public assistance would seem to require a generally favorable attitude toward the hearing process in order for it to operate as contemplated. If an effort is to be made to transform legal theory to legal reality it would seem necessary to focus on efforts to increase the sensitivity of welfare caseworkers to the hearing process.⁹³ The fact that certain variables appear capable of influencing hearing attitudes, at least to a limited extent, provides a basis for a measured optimism concerning the possibility of improving worker attitudes.

The first step to creating those conditions necessary to a more favorable reaction to the fair hearing involves a recognition by workers of the inadequacies of the existing system. A number of caseworkers freely admit that their own deficiencies and those of their colleagues seriously impair the hearing process. It is recognized that "if clients do not know our rules, as surely they cannot, they have to believe that what their worker tells them is correct. Many opportunities for appeal are missed because the client never suspected that he was given incorrect information."⁹⁴ In addition, many workers are aware that the entire system of regulation and administration fails to protect adequately the right to a fair hearing. Some are disturbed by the fact that "recipients do not routinely receive copies of relevant regulations which may be subject to different interpretations,"⁹⁵ and that "the process relies too much on the recipient's willingness and ability to either express [sic] himself in writing or request a hearing after receiving a written statement from the [State Agency] that may be confusing."⁹⁶

Some recognition of the inadequacies of an informal hearing procedure is also evident. Several workers are disturbed that "in some cases decisions are made by the State on evidence presented in writing by a caseworker without the recipient being aware of what the caseworker wrote."⁹⁷ The significant fact is that an increasing number of caseworkers realize that the necessary procedures are not a part of the existing hearing structure in their jurisdiction. What is necessary is for this

93. This is not to say, however, that more complete compliance with federal regulations, as well as increased administrative control at the state level, will not have a commensurate effect on the attitudes and performance of the local caseworker. See generally Scott, *supra* note 14.

94. Caseworker Questionnaire 1.

95. Caseworker Questionnaire 57.

96. Caseworker Questionnaire 24.

97. *Id.*

recognition to be extended to caseworkers generally. As one worker has stated: "The workers need to be re-educated as to their roles in the hearing process."⁹⁸ The correlation that appears to exist between favorable hearing attitudes and age and tenure indicates that this process of re-education is occurring among those workers who have recently begun their professional career.⁹⁹ Increased efforts must be made, however, to reach those who have been involved in welfare administration for a greater length of time, and whose attitudes are, therefore, more rigid and less subject to change. An indication of possible means to affect this reversal of existing attitudes lies in the correlation that was found between attitudes and established rules of procedure. Efforts must be made in these areas to create both a coherent voice for the claimants through self-organization as well as specific guidelines for worker conduct during the hearing. Together, these two factors should engender a climate more favorable to producing change in existing worker attitudes.

Another immediate step which can be made in the direction of favorable hearing attitudes is the establishment of the presence of legal counsel as an accepted feature of the welfare appeal. The present hearing procedure places the worker in the impossible position of being required to advise the client on how best to prove that the worker's own decision was incorrect, while at the same time requiring him to support that decision during the hearing. Faced with this problem, one worker has indicated that "the burden of advising the client is simply too great for the worker."¹⁰⁰ Clearly some form of independent representation is needed, and the most discouraging aspect of the new regulations is the revocation of the provision that would have established free legal representation to those claimants who requested it. Even assuming the availability of free legal services in a given situation, to get recipients to secure the services of an attorney or other representative requires the same reliance on the caseworker to fulfill his obligations to the appeals system. If the worker has ambivalent attitudes toward the presence of the attorney in the welfare appeal, clients may never be aware of the availability and advisability of such representation. One attorney, familiar with welfare hearings, feels that this is the greatest problem of all. He finds an

98. Caseworker Questionnaire 29

99. An equally plausible alternative conclusion, however, is that experience breeds cynicism about the hearing process.

100. Caseworker Questionnaire 73.

inherent conflict between the social worker and the attorney. The social worker does not want an adversary situation. He feels that the attorney is a non-professional unfamiliar with social welfare or its administration, and simply doesn't comprehend the problems the worker has to deal with. The worker wants to handle all disputes as quietly, effectively and with as little disturbance as possible. His argument is that in the context of social welfare, the adversary concept is inoperable.¹⁰¹

Faced with opposition, the legal profession must attempt to reach caseworkers with the argument that the welfare claimant is, in fact, already in an adversary situation when he is cut off from his source of income. Faced with this reality, an obligation exists to obtain relief for the claimant through the hearing process, and the social policy which governed the workers decision must be secondary to the individual case. Only independent representation is capable of placing the individual client ahead of any policy considerations to which the worker must address himself. Consequently, only the attorney is in a position to present the kind of advice necessary to secure for each claimant the full benefit of his rights. If workers can be made to realize this fact, perhaps through such means as recipients' organizations and formal state rules of procedure, a beneficial relationship between worker and attorney can become a reality.

The preceding study and analysis has concentrated on a small area of the administration of the fair hearing requirements, the role played by the individual caseworker. However, the results have indicated that worker attitudes toward the fair hearing and their perceptions of their relationship to clients may well be a significant factor in encouraging the institution of appeals by aggrieved claimants. It is clear that adequate administrative controls must extend to all areas of the fair hearing, both at state and local levels, and that consideration must be paid to methods of control of the workers who stand at the initial stage of the process. However, until ways can be found which insure that each worker fulfills his responsibilities to the client with respect to the fair hearing, the full utilization of the fair hearing as a due process safeguard of the rights of recipients remains to some extent contingent on the attitudes of the individual worker. The results of the study give support to the conclusion that the responsibility of the legal profession to promote the reality of procedural due process must encompass an effort to create a climate in which the hearing process is perceived favorably by those who are charged with the administration of public assistance.

101. See Stewart Interview, *supra* note 53.

APPENDIX

Following is a copy of the questionnaire distributed for the caseworker sample. The numbers under the scale positions in Part II did not appear on the questionnaire given to the respondents, but are shown here to indicate the scoring system.

WELFARE CASEWORKER QUESTIONNAIRE

Directions to Caseworker completing the questionnaire:

This study is designed to obtain some information concerning the welfare hearing and appeals process, and specifically the role played by the individual caseworker. Please answer all questions carefully and honestly to the best of your knowledge. All results will be kept confidential and you may remain anonymous.

I. FILL IN THE BLANKS TO COMPLETE THE FOLLOWING FACTUAL DATA.

1. What is your age? Sex?
2. Where is your local Welfare Agency located?
City State
3. What is your job title and the exact nature of your responsibilities?
4. How long have you been employed with the Social Welfare Department?
5. What was the length of your training period when you were first employed with the Department? Did this include any instruction of welfare hearing procedure? If so, how many hours of instruction were devoted to the appeals process?
6. Are you familiar with the Hearing provisions of your State Welfare Manual?
7. Have you ever had occasion to be involved in a Welfare Hearing?
8. If so, approximately how many times?
9. What is your regular case load?
10. Approximately how many decisions are you called upon to make during a year from which an appeal could be instituted by a dissatisfied client?

11. In your state, does the caseworker participate directly during the conduct of the hearing in front of the hearing officer?
.....
12. If so, do you view your role during the hearing as that of:
 - a. friend
 - b. adversary
 - c. neutral witness
 - d. other (specify)
13. Are there established *rules* published by the State Department of Welfare that establish formal procedures for the conduct of the hearing, or are the hearings conducted informally?
.....
14. How do you explain the low number of hearings instituted by recipients?
 - a. The workers do such a good job, and make few errors
 - b. The clients are generally uninformed of their right to appeal and hesitate to ask for a hearing
 - c. Disputes are settled informally without the need for formal hearing
 - d. Workers discourage clients from appealing whenever possible
 - e. Other
15. Is there a recipients' organization or welfare rights group in your community?

II. INDICATE YOUR AGREEMENT OR DISAGREEMENT WITH THE FOLLOWING STATEMENTS BY CIRCLING THE APPROPRIATE RESPONSE.

1. Generally a caseworker should not encourage clients to request a hearing, but rather should try to settle the question through informal discussion and explanation.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

2. Most clients are unaware of their right to appeal.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

3. A client should be discouraged from instituting an appeal because it is generally a waste of time.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

4. A worker should never inform a client of his right to appeal because "there is no percentage in it."

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

5. A client should usually be encouraged to ask for a hearing because there is always a chance that the worker has made a mistake.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

6. A client should be encouraged to appeal Department policy decisions because it is possible that they are unconstitutional.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

7. If a client continues to be unhappy even after a full explanation, the decision to ask for a hearing should be left to him alone, and the caseworker should not advise him one way or the other.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

8. It is up to the worker to inform clearly the client of his right to a hearing at all times.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

9. If, in fact, clients don't really understand their right to appeal, the present system of informing them of their rights is unsatisfactory.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

10. Whenever a client is determined to ask for a hearing the worker should help him himself instead of sending him to an attorney.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

11. Attorneys, being unfamiliar with Social Welfare policy, should not become involved in welfare appeals and hearings.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

12. Clients are incapable of handling their own appeal and should be directed by the worker to seek the advice of an attorney.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

13. In order to insure objectivity, the worker should leave the client alone and let him decide whether or not to appeal.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

14. The welfare client must be guided to the proper decision because he is generally poorly educated and unassertive.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

15. Clients tend to accept unfavorable action without question because of their special relationship to the caseworker.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

16. The reason that few clients request a hearing is because workers are able to explain decisions adequately to the clients.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

17. A worker is taking a chance in encouraging an appeal because it doesn't reflect well on his abilities.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

18. Any worker with a record of a great number of appeals has less chance of future advancement.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

19. Clients should understand that receiving assistance is essentially a privilege and should not question policy decisions.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

20. Clients should understand that the Department of Social Welfare is designed to help them and if aid is denied, it is just because they don't meet the requirements.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

21. If a client tells a worker of his desire to appeal, he should be told that he doesn't need outside help.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

22. Generally most hearings are unnecessary since the decision of the worker is usually upheld.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

23. When clients seek to enforce their rights through outside help and aggressive tactics, they really are going against the spirit of welfare legislation.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

24. The present hearing process doesn't work effectively and must be changed so the burden of advising the client is removed from the worker.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

25. Although clients are perfectly justified in asserting their right to a hearing, they should not do so unless the worker feels there is a good chance of success.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	3	1

26. A client should consult an attorney if there is any question about any appeal, otherwise his rights will not be fully protected.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

27. Whether or not a client decides to ask for a hearing usually depends on whether or not the worker encourages him to do so.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

28. People overestimate the worker's influence on the clients; most clients would appeal regardless of what their worker advises.

Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
5	4	3	2	1

Thank you. Please return
questionnaire in enclosed
envelope.