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JUSTICE FOR THE WELFARE RECIPIENT

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Abstract

One of the major efforts to better the lives of welfare clients is to introduce procedural due process into welfare administration -- to give welfare applicants and recipients legal rights and the means of challenging administrative decisions. For more than thirty years, the ADC program (now AFDC) has made available an administrative appeal remedy called the Fair Hearing. This paper examines the theoretical basis of this particular type of remedy, the sociological constraints that affect its operation, and suggests reasons why the remedy has not worked, at least in Wisconsin, despite the fact that it has for a long time embodied a good many of the features proposed by reformers. The data consist of 20 years of appeal records, interviews with key state officials, and survey responses from 766 AFDC mothers in six Wisconsin counties, including Milwaukee. The paper concludes with a discussion of alternative proposed reforms, including the new federal and state regulations, the introduction of lawyers into the appeal process, and recent efforts made by welfare action groups.

JUSTICE FOR THE WELFARE RECIPIENT

Fair Hearings in AFDC--The Wisconsin Experience

by Joel F. Handler*

This article examines the experience of the Fair Hearing process in the Wisconsin Aid to Families with Dependent Children (AFDC) program. The Fair Hearing is an administrative appeal designed to give public assistance clients an opportunity to challenge decisions made by county departments of public welfare. The form of this remedy is adversary in that the welfare client initiates and prosecutes a claim against the county agency. The hearing is before a representative of the Wisconsin State Department of Health and Social Services.

A. The Role of the Adversary Remedy: Some Sociological Considerations

Welfare administration is the exercise of state power over people. In a mature political democracy, there are a variety of methods for containing the exercise of this power within its legal boundaries. There are political controls: the voters and their elected leaders influence government activity. There are internal, administrative controls: administrators seek to insure that lower-level officials are acting in accordance with the law including departmental policies. There are judicial controls: administrative decisions may be challenged in the courts through the adversary system. The Fair Hearing process is set within the administrative context. The remedy starts within the

administrative agency and, for all practical purposes, ends there. But it is patterned after the judicial, adversary remedy. Although it has special modifications for its administrative setting, the assumptions behind the remedy and the expectations for its performance have been borrowed from the judicial model. It also carries with it the limitations of that remedy. Before examining the Wisconsin Fair Hearing experience, it will be useful to consider more generally the theoretical and sociological considerations of the adversary system. What is it supposed to do? And what conditions affect its performance?

Most lawyers and law-reformers would agree with Frank A. Allen's statement that in the history of Anglo-American law's "slow development of measures and tactics for the containment of state power and for the protection of individuals from the deliberate or negligent abuse of official authority...,there is no more important product. . . than the adversary system of justice. . ." Dean Allen goes on:

> Whenever the state proposes to deprive a person of such possessions as his liberty, his life, or his status. . ., the case for the exercise of state power must be clearly made. Moreover, the person proceeded against is permitted and, indeed, encouraged to challenge such assertions of state authority by any proper means, including challenges to the evidence produced by the moving party and the introduction of countervailing evidence. The essence of the adversary system is challenge. It serves as a continuing reminder to those clothed with state authority that their powers must be exercised within the limits prescribed by the community. It expresses the shrewd insight that those possessed of power are prone to laxness and excess unless subjected to effective challenge and supervision.[1]

The essence of the adversary system is challenge, but challenge, and particularly the challenge of government does not take place in

a vacuum. The challenger has to have something to challenge; he has to have a legal right which he claims has been violated. He has to know that his right has been violated and that he has a remedy available to him. He has to have the resources with which to pursue the remedy, and he has to decide whether the predicted benefits of winning will outweigh his costs of trying. Much attention of law reform thus far has been paid to establishing legal rights and making knowledge and resources available to potential challengers. Continuing effort, if not progress, has been made along these fronts.

So far little attention has been paid to the costs of challenge (other than the direct costs of litigating) and the effect of these costs on the use of the remedy. At the minimum, a challenge is a bother. Even if a wrong has been committed, and the person has knowledge and resources, the harm has to be sufficiently serious (or the person irate enough) to justify the bother. Many suffer indignities without seeking redress. A challenge is an attack, and the challenger has to reckon on the response of the person challenged and the likelihood of retaliation. In a prosecution for a serious crime, the potential harm to the accused is very great, and he is generally not concerned with the attitude of the police and prosecutor. But in many other dealings with government, the attitudes and responses of officials may be very important--so important that the alleged victim dare not seek redress through adversary challenge. This dependence on the good graces of officials arises when the alleged victim is required to maintain a continuing relationship with government. In the administration of the economy, powerful businesses often fail to seek redress

against what they regard as unwarranted government actions because of the threat to the on-going relationship.[2]

These considerations have a particular importance in welfare administration. The population of complainers comes from the lowest strata of society. It is expected that knowledge of rights, perception of wrongs, and the energy and resources with which to prosecute the claim--all necessary to make an adversary remedy work--would be most lacking among this group. Their most immediate task is to feed, clothe and shelter the family. Complaining requires a commitment of scarce and valuable resources, even if only time and energy.

Costs of challenging administrative decisions in welfare will vary between those complainers in the program as compared to those outside of the program. In AFDC, eligibility and need determination are a continuing process--caseworkers have to examine continually changes in circumstances of welfare families to see if their eligibility can continue or their budget should be changed. In addition, since assistance grants support families only very marginally, provisions have to be made for a variety of special needs or supplementary allowances for such things as special diets, extra clothing, appliances, and furniture. Many items of special need are to meet daily living requirements, but other items, particularly in a state like Wisconsin, are for rehabilitative purposes; they are designed to help a family improve its life chances. Thus, there are allowances to permit children to continue their education beyond high school, to learn trades, to participate in the social activities that nonwelfare children engage in. There are a variety of ways in which the program can help parents improve their employment skills,

family and home care, and social activities. These benefits are available, but they are discretionary. The caseworker, then, has the power to grant benefits or apply sanctions to the family during the period that the family remains on the program.

One of the factors, then, in considering whether to appeal an adverse decision is the cost that it may have to the client in this on-going relationship. An appeal is a challenge to the caseworker. It is a refusal to accept a caseworker's analysis and judgement of the facts, generally a similar refusal to abide by the decision of the caseworker's supervisor and perhaps even the county welfare director, and to ask the State Department of Health and Social Services to vindicate the client by deciding that the client is right and the caseworker and the county department of public welfare are wrong. The client has to ponder whether the caseworker will accept such a challenge. Even if the client wins, how will the caseworker treat future requests of the client? Will the caseworker impose sanctions by either denying extra benefits or imposing conditions for continued eligibility--for example, deciding that the mother should seek employment? In short, will the caseworker retaliate? The important point is not necessarily whether the client's prediction is accurate in fact. As long as the client thinks that there is or may be caseworker retaliation, or that the on-going relationship will suffer in other ways, this will tend to choke off appeals.

The stakes are different for the client who is outside of the program. The client denied entry or terminated is concerned with basic survival, rather than amenities offered by the program. For her, the

benefits of winning an appeal should clearly outweigh the loss that may result from a less-than-harmonious relationship with the county welfare administration if entry is gained. Still, one would nevertheless not expect many appeals because of the desperate circumstances of these families in the face of powerful dispensers of benefits. We know that many persons charged with crime simply do not comprehend warnings and advice as to rights and we are becoming increasingly reluctant to allow criminal defendants to waive their rights, particularly the right to counsel. We must be equally cautious about what to expect from welfare applicants. More often than not these are lower-class, poorly educated, unsupported families who have not only suffered a personal disaster but have also tried to support themselves for a period of time. They are interested in the basic daily needs of life, not advice as to how to appeal a decision of "no help here."

These are some of the considerations that affect the use of an adversary remedy in welfare administration. We turn now to the Wisconsin experience where for thirty years, the federal government and the Wisconsin State Department of Health and Social Services have tried to make Fair Hearings work.

B. The Administrative Structure

The administration of AFDC is in most states, including Wisconsin, a three-tiered bureaucracy--the federal, state and county governments. Ever since 1935, one of the federal conditions for grants-in-aid has been that the states had to provide an opportunity for a Fair Hearing to any person whose application for AFDC was denied. The Fair Hearing

requirement was "based on the concept that the claimant who meets the requirements established in state law has a right to a hearing when he is denied these benefits." The purpose was to break with "the past /where/ public assistance was administered largely on a discretionary basis."[3] At the time of this study, federal law provided:

> Every claimant may demand and obtain a hearing before the state agency in relation to any agency actions or failure to act on his claim with reasonable promptness. . . Every claimant is informed in writing at the time of application and at the time of any agency action affecting his claim, of his right to a fair hearing and of the method by which he may obtain a hearing.[4]

Federal standards have also required that there be publication of hearing procedures, that claimant's freedom to request a hearing not be interfered with in any manner, that his request may be in a form of any clear expression that he wants to present his case to a higher authority, that the hearings be conducted at a time, date and place convenient to the claimant, that the hearing be conducted by an impartial official of the state agency, that the claimant has the right to be represented by legal counsel of his own choosing, that he will receive a prompt and definitive action on his request for a hearing and a decision on his claim, plus many other procedural safeguards.[5]

The Wisconsin statute on Fair Hearings is as follows:

> Any persons whose application for . . . aid to dependent children . . . is not acted upon with reasonable promptness after the filing of the application, or is denied in whole or in part, or whose award is modified or cancelled, or who believes his award to be unsufficient, may petition the [state] department for a review of such action. The department shall, upon receipt of such petition, give the applicant or recipient reasonable notice and opportunity for a fair hearing.[6]

The State Department Manual spells out the Fair Hearing procedure.[7] If a claimant in any manner indicates a desire to have a Fair Hearing, he is to be provided with a form either by the county agency or directly from the state office if he writes. The form is simple. All that the claimant has to do is to fill out his name and address and the appropriate blanks for the basis of his claim, which are also stated simply. The form ends with a request that the matter be reviewed, a place for the signature and date, and the address of the state office where the form is to be sent. After the state office receives the form, it notifies the county agency and the state district supervisor.

For purposes of welfare administration Wisconsin is divided into ten geographical areas, each headed by a district supervisor. The county and state files are sent to the district supervisors. The regulations state that the supervisor in the Fair Hearing process, is a "pre-hearing counselor or mediator, never an adjudicator." He has discretion as to the nature and extent of the services he can offer the participating client, the county and state agencies. In practice, the district supervisors conduct pre-hearing investigations which nearly always include getting the client's story and explaining to the client the Fair Hearing procedures.[8] The supervisors also try to mediate and, as we shall see, a large proportion of the appeals are settled at this stage of the proceedings. A case cannot be settled without a hearing unless the claimant signs a written statement withdrawing the petition.

If a settlement cannot be reached, the supervisor forwards the case to the state office and a hearing is then arranged by the

supervisor and the legal department of (what was called at the time of the study) the Division of Public Assistance of the State Department. The hearing is held at a place convenient to the claimant. It is presided over by an examiner who is a lawyer, representing the state office. The county agency is represented; and the petitioner can appear alone, with a friend or relation, or with counsel. Hearings are informal and the examiners take an active role in questioning the parties. Sometime after the hearing, a written decision is made in the name of the Director of Public Assistance. Copies are sent to the claimant, the agency, the county clerk, the district supervisor, and the claimant's lawyer if he is represented by one.

Although practices of the district supervisors vary, all of them reported following the same basic procedure. Not infrequently they are aware of a particular case before they receive the formal notification. Troublesome matters come up in their frequent discussions with county agency personnel. On receipt of the notice, most district supervisors make it a practice to check the agency file and talk with the agency first before contacting the client. They justify this practice on the ground that often the agency has made a mistake in calculation or misinterpreted state policy and is willing to correct its error. Most supervisors also state that even when the county corrects its error, they will still see the claimant personally. In any event, practically all claimants have a personal, private interview with the supervisors, usually in the claimant's home. The supervisors report that the interviews usually occur within one to three weeks of the receipt of notice.

Despite the fact that the Manual states that the supervisors are to be mediators and not adjudicators, it is quite obvious that all of the supervisors work hard at trying to get settlements. Again styles, emphasis, and approaches vary, but practically all of them are quite willing to give their views as to the merits of the respective positions and to suggest solutions. Much of the work of the supervisors in this pre-investigation stage consists of smoothing over hurt feelings, re-establishing communication between a stubborn recipient and an angry caseworker, or simply clearing up misunderstandings. One gets a distinct impression from interviewing the supervisors that they have somewhat of a pro-recipient, anti-agency orientation. Several stressed the fact that often they will "push pretty hard" with the agencies if they are "wrong." Practically all of the supervisors made a great point of the fact that the purpose of the Fair Hearing process was to afford recipients due process. The task of the supervisor was to put the recipient at ease, to explain the procedures including the right to counsel, and to give the recipient moral support. They said that they would never allow the recipient to sign withdrawals if there were lingering doubts. All emphasized that they had to be careful about blocking the recipient's right to appeal. Although some of the supervisors referred to claimants as "trouble-makers" and "malcontents," they nevertheless seem committed to due process ideals.

Fair Hearing cases account for only a very small fraction of the district supervisors' time, perhaps one day a month. This is important for two reasons. First, the comparative rarity of the cases militates against a mechanical, machine-like processing that large

numbers of appeals usually produce in administrative agencies and lower courts. The district supervisors were not jaded. Several supervisors gave accounts of complicated cases requiring considerable effort on their part. According to the state regulations, their extensive involvement was not required; nevertheless, this was their practice and they seemed to welcome and enjoy the opportunities. Second, because Fair Hearings were only a small part of their duties, they did not come to the counties primarily as investigators of complainers against local administration. In fact, it was the relationship built up through their non-Fair Hearing duties which was the dominant relationship and which no doubt affected their ability to achieve settlements in Fair Hearing cases. The state district supervisors are the principal liaison links between the state department and the county agencies. The great bulk of their time is spent in explaining and interpreting state policies and procedures to the counties, assisting them on matters of personnel, budgeting, staff resources, program development, acting as general sounding boards, and transmitting back to the state office the counties' needs and problems. At the time of the interviews, the majority of supervisors had been in their position for more than 10 years, two for almost 30 years. All had had experience as caseworkers, and most had served in other supervisory capacities including welfare directors of county departments. Therefore, when they approached a county agency on a Fair Hearing question, most came as experienced social workers who were well-known and trusted through years of intimate association.

C. Organizational Goals

The Fair Hearing process has a dual purpose. For the victims of lawless government, it gives due process redress. It is also a method of detecting and correcting improper administration. In the words of the state department, it is a "safeguard against arbitrary action."[9] Providing a remedy for "arbitrary action" however, creates a dilemma for an organization; it is, in effect, being asked to provide weapons that are to be used to attack the organization itself. "Arbitrary action" is the type of thing that the men at the top are supposed to prevent anyway. The organization's tendency, therefore, would be to deny that there is really that much of a pressing need for adversary due process redress. Furthermore, there are more palatable or administratively comfortable ways to check "arbitrary action" than due process hearings--internal inspections, reports and statistical monitoring, for example. Due process carries the risk of loss of control, and publicity--even rancor--particularly when outsiders (e.g., lawyers) are allowed to participate. For these reasons, one would be suspicious of an organization's commitment to due process redress.

The particular organization and history of public assistance administration in Wisconsin lessens some of these dilemmas. Until 1935, public assistance was almost exclusively in the hands of the counties; there was very little central state supervision and there was great variety in local administration. The Social Security Act of 1935 required either a state-administered program or a state-supervised, county-administered program. Wisconsin opted for the latter, but it was a long struggle before a statewide supervisory organization was

created with effective supervisory powers.[9a] As a result of this history, one of the major tasks of the state department has been to standardize administration throughout the state, as well as improve the substantive aspects of public assistance. The department uses many methods to accomplish this goal (including the liaison work of the district supervisors), and one of them is the Fair Hearing process. Client complaints help detect weaknesses in programs and afford the state the opportunity to change county administration. The department has an interest in encouraging Fair Hearings, at least insofar as clients are attacking county administration which has been deviating from state policy.

But, suppose the client is attacking county administration which is correctly following state policy--in other words, an attack on the state organization? The regulations do not seem to recognize this possibility, at least not as explicitly as they seem to recognize the possibility of county deviation. This ambiguity of purpose was also reflected in the comments of the district supervisors. Most mentioned the goal of securing rights for the client. But while there was general agreement that the Fair Hearing was a device used by the state to supervise county administration--to "make sure that the counties were acting properly"--none mentioned explicitly that the Fair Hearings should be used to question state policy.

The administrative structure attempts to supply at least part of the ingredients necessary for the adversary remedy. The statutes and regulations give the welfare clients (applicants and recipients) the substantive basis for complaints. At least formally, there is no lack

of legal rights. According to the law, practically every administrative act dealing with a client is potentially appealable. The regulations also attempt to supply knowledge. County administration is instructed to advise welfare clients in writing of their rights of appeal. The appeal procedure itself is very simple, very easy to invoke, and very inexpensive as far as the direct costs of litigation are concerned.[10] In addition, the state department attempts to supply resources in the services of the district supervisors. They enter the dispute very quickly and, in effect, carry the ball for the client. Finally, the state department, as a supervising agency, has an interest in seeing that the Fair Hearing process works. They view it as one of the techniques for detecting and correcting weaknesses in county administrative practice.

We turn now to the operation of this system.

D. The Fair Hearing Decisions

In order to document the actual nature and extent of use of Fair Hearings, a sample of 449 AFDC appeal cases was analyzed statistically. All cases in every second year from 1945 to 1965 were selected. The Fair Hearing records that were used consisted of the decision only; underlying case files were not examined. The decision reports varied as to content but generally contained the name of the petitioner and the date; the county; the program (e.g., AFDC); the claim raised on appeal (e.g., denial, discontinuance, suspension, or insufficiency of aid); person, if any, accompanying petitioner if a hearing was held; other parties, if any (for example, on occasion a municipality would

be a party at interest); the issues raised (e.g., whether the AFDC mother needed a car); the time of the settlement of the case (the stage in the Fair Hearing process); and the mode of settlement or disposition of the claim (including the orders to the county). The reasons given for the various dispositions were usually very brief and formal. The decision records did record every case in which an appeal was filed by a welfare applicant or recipient with the state department; that is, even where the district supervisor settled the case, all of the above data (except that pertaining specifically to the hearing stage) would be recorded, including claim, issue, and mode of settlement. The settled cases invariably contained a form statement that the petitioner understood the terms of the settlement and agreed with the decisions.

In 1945, there were 2,446 applications for AFDC (then ADC); in 1965, the end of the period studied, there were 6,841 applications. The increase in applications was fairly steady except for the sharp rise in 1949 reflecting the economic recession. The number of recipients on the program increased from 6,008 in 1945 to 11,200 in 1965. Except for the large increases in 1949-51, the rise again was fairly steady. The number of appeal cases per year ranged from a low of 54 in 1945 to a high of 294 in 1951. From 1945 to 1955, the number of appeal cases generally followed the rises in applications and recipients. The years 1951 to 1955 averaged about 233 appeals per year. On the other hand, the average for the last six years of the sample, 1959-1965, was only 124 appeals per year. The number of appeals over the six year period has been relatively stable despite a nearly 50

per cent increase in the number of applications and a 22 per cent increase in the number of recipients.

The claims on appeal fell into three major categories. Forty per cent of the cases were appeals from denials of aid--the applicant was found ineligible to enter the program. A third of the cases were appeals from the discontinuance of aid. And 21 per cent involved the sufficiency of aid; in these cases, recipients complained that their grants were insufficient--either the basic budget was not computed properly or requests for special needs were denied.[11]

Although appeals from denial represented the largest single category of claims, they constituted only a minute proportion of the total number of denials of applications for aid. In the 1945-65 period, there was a total of 52,508 applications. The percentage of applications denied fluctuated between 21 and 34 per year. For the entire period, there were 14,742 denials which was 28.1 per cent of the number of applications. The total number of appeals from denials was 181. Only 1.2 per cent of all denials of aid were appealed.

The appeal rates for other types of claims showed much the same story. For the period studied, there were 35,543 discontinuances; only .4 per cent were appealed. Recipients on the program can appeal if they think that their grant is insufficient or if special requests are denied or for other types of caseworker decisions. Only about one out of every one thousand recipients filed an appeal.

Issues on Appeal. Most but not all of the appeal cases involved a single issue.[12] The 449 cases accounted for 506 issues. Sixty-four per cent of the issues raised questions of eligibility and 21 per cent

budget. Only 8 per cent of the issues involved personal misconduct on the part of the recipient.

Eligibility issues raise questions of both law and fact. They are issues which must be answered before an applicant can receive aid or before a recipient can continue on the program. Eligibility questions often involve budgetary questions. When a person applies for AFDC, a hypothetical budget for the family (set forth in the regulations) is compared with the resources of the applicant; the former has to exceed the latter for eligibility. Once on the program, a change in circumstances can cause the family's resources to exceed the hypothetical budget, and eligibility will be lost.

The distribution of eligibility issues, in order of frequency, is presented in Table 1.

TABLE 1

Eligibility Issues in AFDC Appeal Cases

Issues	PETITIONS %	PETITIONS N
1) husband's incapacitation	34	95
2) failure to prove need vis-a-vis present income	16	45
3) failure to prove need vis-a-vis accumulated assets	9	25
4) the children are not dependent	7	20
5) automobile not necessary	7	20
6) failure to take the legally required domestic relations actions	7	19
7) father not absent or a husband presently resides in the home	4	11
8) barred by other financial considerations	4	10
9) mother refused to work when ordered to do so by the agency	3	8
10) application within three months since abandonment by the father	3	7
11) transfer of assets prior to application	1	4
12) possessed an automobile of sufficient value to bar eligibility	1	2
13) received other welfare in addition to AFDC which had the same coverage	0	1
14) specific need issue not reported	5	13
TOTAL	100%	280

1. Incapacitation. In the AFDC program, incapacitation is sufficient if it "results in inability of the parent properly to support the child." Incapacity need not be complete. Moreover, "gainful work shall be interpreted to mean work which the spouse is ordinarily competent to perform taking into consideration the nature of his disability, his accustomed type of employment and means of earning a livelihood for himself and his family and the extent to which his education and training are likely to permit his adaptation to such type of employment as may be reasonably available to him." Appeals under these regulations raised questions regarding numerous types of disabilities, including psychological ones, the extent of the disability and the training and skills of the person. In addition, job opportunities in the area for someone with the applicant's training and limited capacity for work were also considered.

2. Failure to prove need vis-a-vis present income. In some of these cases the applicant was declared ineligible because of sufficient resources, when in fact the county agency figured the family's budget inadequately. Several cases raised the question of how much contribution to the family budget is required from the earnings of children.

3. Failure to prove need vis-a-vis accumulated assets. The regulations set a maximum amount of liquifiable assets, and the applicant must reduce his assets before aid can be granted. Disputes involved the value of homes, farms, as well as other forms of real estate, cash value of insurance policies, bank accounts, and the effects of other welfare benefits.

4. Children not dependent. Examples included children of applicants not living at home, or over eighteen years of age but not in school. Several cases involved non-parents applying for aid and the question was whether the applicant was an eligible caretaker under the statute.

5. Automobile not necessary, or if necessary, excessive value. The regulations prohibit owning a car unless it is necessary for employment, or where public transportation is either unavailable or so difficult that a car is necessary to maintain the well-being of the family. If a car is necessary, the Blue Book value must ordinarily be less than $500.

6. Failure to take legally required domestic relations actions. The law requires that the abandoned wife charge her husband with abandonment. She must also initiate divorce or separation proceedings. If divorced or separated, she must attempt to compel support payments, and it is this latter requirement that was responsible for the most appeals in this category.

7. Father not absent or a husband presently resides in the house. In several cases, mothers who remarried were barred from receiving aid for children of a prior marriage. (This rule has now been invalidated by a recent opinion of the attorney general.) A few cases involved the question of whether the husband had in fact abandoned his wife.

8. Barred by other financial considerations. This was a miscellaneous group, including whether the applicant's family is able to support her, whether the applicant had to sell an unprofitable business, and the disposition of assets prior to acceptance of the application.

Budgetary disputes, not involving eligibility, were appealed in 93 cases. Thirty-nine involved disputes over allowances for necessities, such as food or rent; ten disputed decisions concerning special needs, such as home appliances or special dietary requirements; and the balance raised problems such as the contribution required of children, the deduction of support payments which were allegedly not made, and whether particular items should be included in the AFDC budget. In several cases, the recipient alleged no particular issue except dissatisfaction with the way the budget was computed.

Clients can be terminated for misconduct. Protesting discontinuance on this ground was raised in twenty-eight cases. All of the issues, with three exceptions, involved financial misconduct, such as the disposition of assets while receiving AFDC payments, failure to account for proceeds, unauthorized purchases, failure to report assets, and the failure to report decreases in expenses. In the three cases which did not involve financial misconduct the county welfare departments were reversed. The state department held that "unfitness" should be determined by courts (e.g., child neglect proceedings) rather than local agencies. Thus, for all practical purposes, the kinds of cases involving serious invasion of client's privacy, described in the literature, did not appear in the Fair Hearing process.[13]

Dispositions. Tabulations in Table 2 show the win-loss results of the Fair Hearing cases. It is clear that the Fair Hearing process is a significant means of reversing local welfare decisions; forty-five per cent of all petitions filed resulted in a determination favorable to the client. In 20 per cent of the cases the win-loss

TABLE 2

Dispositions of AFDC Appeals

	Per Cent	Number
Petitioner Wins		
1. Petition withdrawn before hearing after agency grants aid desired on same facts	19	84
2. Petition withdrawn before hearing after agency grants aid based on change in circumstances or compliance with agency	6	26
3. Aid reinstated after hearing	7	32
4. Lower decision delaying aid reversed after hearing (no formal order)	14	62
Total	45	204
Petitioner Loses		
1. Lower decision affirmed after hearing	35	158
Petitioner Did Not Get What Was Asked at the Time of Filing the Appeal		
1. Petition withdrawn before hearing without favorable result on same facts	8	35
2. Petition dismissed without request by petitioner because aid no longer necessary, issue moot, or petitioner informally abandons appeal	5	22
3. Petition withdrawn without favorable result before hearing because aid no longer necessary	7	30
Total	20	87
TOTAL	100	449

result is not clear. One would be inclined to view these cases as losses on the grounds that the petitioner did not get what she asked for.

Only 56 per cent of the sample cases actually reached the hearing stage; the remainder were settled by the district supervisors or were abandoned. Petitioners who settled their cases were much more successful than those who proceeded to a hearing--56 per cent compared to 38 per cent. Perhaps these results support the opinions of the district supervisors who see themselves primarily as pro-client. If there is merit in the client's claim, the district supervisor will tend to be able to persuade the county welfare department to grant the claim. If the claim is non-meritorious and the client is recalcitrant, she will tend to lose anyway at the Fair Hearing. On the other hand, it is possible that the Fair Hearing examiners view the claims in the same way--if the district supervisors cannot effectuate a settlement, then the claim is not meritorious or the client is unreasonable.

As shown in Table 3, more denial and discontinuance claims were pushed through to a hearing than sufficiency claims. Sufficiency, which involves budget but not eligibility, is probably more capable of negotiation and settlement by the district supervisors. Also, since the client is still in the program, she probably feels more of an obligation to be reasonable herself; after all, she still has to live with the county welfare department. Denials and discontinuances, on the other hand, are all-or-nothing situations where the client has nothing further to lose and the future bargaining relationship is of less consequence.

Despite their persistance, the denial petitioners are the heaviest losers; they lose more then 60 per cent of the time whereas the others tend to break even. The difference between the denial and discontinuance success rates is surprising since both mostly represent the same

TABLE 3

Time of Settlement and Disposition by Type of Claim

	% Hearing	% Petitioner Wins	N
Denial	61	37	(181)
Discontinuance	62	52	(149)
Sufficiency	49	48	(96)

type of issue (eligibility) and both are likely to reach the hearing stage. The result can perhaps be explained by two factors. First, a large portion of the agency's time is spent on making initial eligibility determinations and over the years, the state department has stressed a more liberal county eligibility administration. The decision to exclude might be a pretty careful decision. Second, the discontinuance decisions contain a significant number of misconduct cases which get reversed more often than eligibility issues. Petitioners win somewhat less than half of the eligibility issues, but almost 70 per cent of the misconduct issues. Agencies perhaps tend to overscrutinize the clients' use of assets while on the program.

What changes have occurred in the AFDC Fair Hearings over time? Comparing the decisions during the period 1945-1955 with the period

1957-1965, shows remarkable little difference in the two periods. Proportions of types of claims and issues did not vary very much. In terms of these categories, the problems raised were remarkably the same. On the other hand, the client's chance of prosecuting a successful appeal has decreased significantly during the latter ten-year period. Success rates dropped about 12 percentage points and this decrease in success rates holds true for all three major types of claims. This result might be due to the increased clarification of the regulations promulgated by the state, the development of staff training programs, and the improvement in state-county liaison efforts.

Despite the decline in petitioner success rates, it can not be concluded that it is useless for an AFDC client to request a Fair Hearing. The success rate is still reasonably high. The most disturbing aspect of the Fair Hearing statistics is the apparently infrequent use of the remedy. Lack of use may be due to the fact that there is no need to appeal, that the county agency decisions are not only correct, but also that the welfare clients are satisfied with the caseworker decisions. Data from the district supervisors and a sample of AFDC recipients, discussed below, cast doubt on this explanation.

The statistics of the Fair Hearing decisions themselves shed some light on why appeals are used so little. It has been suggested earlier that clients who must maintiain a continuing relationship with the agency would find it more difficult to challenge the county agency than those off of the program. In fact, three-quarters of the appeal cases

involved petitioners who were off the program, either because they had been denied entry or had been terminated. Challenges made during the course of a continuing relationship between the client and the agency occured in less than one-quarter of the sample. These were the sufficiency claims.

Most of the appeals are from denials of applications pressed by those who have little to lose by appealing. Yet, even though the numbers of those who appeal is very small, an analysis of the denial appeals sheds light on the social conditions which tend to choke-off the prosecution of appeals. We argued that the ability to challenge government is differentially related to the resources that the potential challenger possesses. One would therefore expect that the AFDC mother would be least able to challenge an adverse decision. She has lost her husband (or never had one), has several dependents, has more often than not tried to go it alone, and is relatively young and unskilled. Women in this position are truly disadvantaged. The appeal rate per 1,000 denials for AFDC was compared with the other categorical public assistance programs: Old Age Assistance, Aid to the Disabled, and Aid to the Blind. Although the rates of appeal are low for all programs, it was found that the appeal rate per 1,000 denials for AFDC is exactly half that of the other programs. Most of the OAA appeals from denials involved transfers-in-contemplation-of-aid, where a person divests himself of property in order to qualify for assistance. In contrast to the single, young, unskilled mother seeking AFDC as a last resort, these OAA applicants are small businessmen (usually farmers), who have been property owners and

accustomed to handling their affairs for their entire adult life. The DA applicants are husbands who have been in the labor market. In other words, the potential clientele of these programs have more of the resources necessary to challenge government authority than can be expected among the potential clientele of AFDC.

Finally, when the issues raised in eligibility appeals in the AFDC program are inspected, we find that the largest single issue, which accounts for more than one-third of the cases, involves incapacity of the husband--an intact family of a former wage earner--as distinguished from the young, unskilled single woman with several dependents. In other words, those who would seem to have the least capacity to appeal from denials of aid, do, in fact, appeal less than the other types of welfare applicants.

E. The Opinions of the District Supervisors

The state district supervisors were asked a series of questions evaluating the Fair Hearing process. On most of the questions there was a division of opinion and, interestingly, the division was usually in terms of the age and experience of the officials. Those who were older and who had been district supervisors from 10 to 30 years tended to have a more favorable opinion of the way the Fair Hearing process has been operating than those who had been district supervisors for shorter periods of time and who had been more recently involved in direct work in the field. The older district supervisors thought that the present number of Fair Hearing appeals was about right. The younger were practically unanimous in the view that overall there were far too few appeals. The older supervisors were generally of the view

that welfare applicants and clients were aware of the right to appeal (although they may lack full understanding); that they were aware of what they were entitled to under the program; that there was little or no fear of reprisals if appeals were taken; and that generally the lack of appeals reflected the high quality of administration on the part of the counties within their districts. They tended to explain the appeals that were taken on the basis of personality factors such as an overly agressive client, misunderstandings, and poorly trained or unsympathetic caseworkers.

The younger district supervisors presented a different picture. In general, they were in agreement that there was an overall lack of knowledge on the part of the clients concerning their right of appeal or what they were entitled to under the program. Some of the supervisors attributed this, in part, to the manner in which information is made available and to the complexities of the program. But most blamed the caseworkers for failing either to tell clients about the right to appeal or to explain the right properly. Some of the supervisors thought that there were deliberate attempts to keep clients in the dark to keep welfare costs down. In one county, for example, clients were never told that the agency was supposed to fill out the clothing needs when the family first comes on the AFDC program. Other counties would not give out information on the availability of grants for special needs. Although opinions varied among the younger supervisors as to the motives and intentions of the caseworkers, none of them thought that there was sufficient effort on the part of the

caseworkers to go out of their way to explain rights and benefits under the program. Finally, practically all of the younger supervisors stressed the importance of the on-going relationship in reducing the number of appeals. Although few thought that caseworkers explicitly threatened clients, they did think that clients were fearful of challenging the agency, of "rocking the boat." One supervisor stressed the powerful image that the agency creates when confronting the welfare client. The younger supervisors were certain that the fear of reprisals existed; but they varied in their estimates of how extensive this fear was.

F. The Response of AFDC Recipients

In the spring, summer, and fall of 1967, a survey was taken of 766 AFDC recipients in Milwaukee and five other Wisconsin counties. Two counties were middle-sized and three were rural.[14] The survey was part of a larger study of the experience of AFDC recipients, but certain questions were included which bear on the functioning of the Fair Hearing process. Did the AFDC clients have complaints? What kinds of complaints were they? And what did the clients do about them?

The survey did not uncover any seething, hotbed of discontent or oppression in Wisconsin AFDC administration. Nevertheless, twenty-eight per cent of the respondents said that at one time or another they had complained to the caseworker "about some action he took or didn't take or about some question he asked or about anything else that might have bothered" them. This group of recipients was asked to list the types of things that they complained to their caseworkers

about. The results are tabulated in Table 4. Most of the complaints dealt with the budget. Forty per cent of this group had to complain on more than one occasion. For a sizeable proportion of recipients, then, the administration has not been wholly acceptable nor have the recipients been wholly passive.

TABLE 4

Specific Things that AFDC Clients Complained About to Their Caseworkers

	%	N
1. Differences over money, e.g., amount of check, special requests, reimbursement for payment, how money was spent, medical needs.	55	176
2. Private affairs and regulation of social life, relationships with men, unannounced visits.	7	23
3. Regulation of family life, e.g., fostering children, special schools for children.	10	33
4. Housing, e.g., moving, tidiness, amount of rent.	9	28
5. Relationships with husband, e.g., support.	9	28
6. Employment.	2	7
7. Other	8	25
TOTAL	100%	320*

*N is total number of complaints by all respondents

Respondents were then asked a series of questions about "wrong" or "unfair" caseworker decisions that the recipients wanted to change. The ways they suggested they would handle a problem decision are shown in Table 5.

Fifteen per cent of those interviewed (115) said they thought an unfair decision had been made in regard to them, and one-third of those (38) said unfair decisions had been made more than once. The nature of the specific decisions which they considered wrong or unfair are shown in Table 6. Of the one hundred and fifteen recipients who reported a wrong or unfair decision, almost half (55) had talked with the caseworker's supervisor about the decision.

TABLE 5

What Recipients Would Do to Change Decisions

"Suppose your caseworker made a decision in your case that you thought was wrong or unfair and you wanted to change the decision. How would you go about it?"

	%	N
1. Have no idea	28	215
2. Do nothing	2	17
3. Talk to caseworker (no mention of going further)	34	257
4. Go over caseworker's head to the supervisor	28	214
5. Appeal decision	2	18
6. Seek outside help	2	14
7. Other; NA	3	26
TOTAL	100%	766

TABLE 6

Nature of Unfair or Wrong Decision Reported by Recipient

What did the caseworker decide?

	%	N
1. Major decision about a child (e.g., giving child up)	8	9
2. Decisions about activities of child (e.g., eligibility for camp)	6	7
3. Withdrawal or reduction of AFDC	21	24
4. Other monetary problems about AFDC (e.g., refusal to pay bills; refusal of special requests; disputes over amount of check; children's earnings)	45	52
5. Obtaining support from husband	5	6
6. Employment; re-training	6	7
7. Other	9	10
TOTAL	100%	115

The women who spoke of unfair decisions had routes open to them other than talking to the caseworker's supervisor. But as Table 7 indicates, relatively few chose to pursue their efforts over the head of the supervisor.

TABLE 7

Client Responses to Specific Decisions

"What else did you do (other than talking to caseworker's supervisor)?"

Responses by those who spoke to supervisor (55):	%	N
1. Nothing	30	16
2. Worked problem out with caseworker	22	12
3. Appealed	5	3
4. Turned to other authorities (e.g., District Attorney, other agencies)	18	10
5. Saw a lawyer	7	4
6. Took care of problem herself	9	5
7. Other, NA	9	5
TOTAL	100%	55

Responses by those who did not speak to supervisor (60):		
1. Nothing	41%	25
2. Worked problem out with caseworker	15	9
3. Appealed	3	2
4. Turned to other authorities (e.g., District Attorney, other agencies)	12	7
5. Saw a lawyer	2	1
6. Took care of problem herself	12	7
7. Other, NA	15	9
TOTAL	100%	60

The tabulations of Tables 4 and 6 show that disputes about budget arise far more frequently than any other issue. Yet the statistical analysis of the AFDC Fair Hearing cases shows that budget disputes are appealed far less frequently than other issues. One of the reasons is that budgetary disputes are more apt to be resolved through negotiation than are eligibility and misconduct issues. Also, these decisions are less likely to produce a crisis of sufficient seriousness that a client would risk rupturing her on-going relationship with her caseworker. Many items at issue may in fact be quite small; for example, the denial of a request for some extra clothing, or floor covering, or an extra allowance for restaurant meals. Then, in the budget area, and particularly with special requests, several so-called "rights" or "entitlements" are, as a practical matter, not clear-cut despite statutes and regulations. Rights come into existence only after a caseworker can be persuaded that the client has sufficient need to justify the request. This is also the area in which some of the district supervisors claim that caseworkers fail to tell clients what they are entitled to or give clients misleading information. This too would lessen the number of appeals from client dissatisfactions.

The responses in Table 5 shed further light on why so few appeals come from AFDC recipients. Almost a third of the respondents either have no idea about how to get a decision changed or would do nothing. It could be argued that if the decisions really hurt enough, the recipients would find out what to do. The very small numbers of appeals from denials of applications and terminations of aid cast doubt on this argument. At any rate, a sizeable group of respondents are ignorant of

any remedy whatsoever. Another third would talk to the caseworker only; the answers to this open-ended question indicated that the respondents would try to persuade the caseworker to change his mind; there were no suggestions that the clients would go further. Another 28 per cent would go over the caseworker's head, but only to the caseworker supervisor. Practically all of the respondents, then, would rely on the good graces of the lower-level county welfare officials either to change their decisions or tell the respondents how to appeal. For those who did encounter decisions that they wanted to change, we see that in fact they did rely either on the caseworker or the caseworker supervisor. Some turned to outside sources; only 5 used the state department remedy.

Finally, each respondent was asked whether they knew "that you have a right to appeal decisions you don't like and to get a hearing on your objection before an official of the State Welfare Department (called the Appeal and Fair Hearing Process)?" Only thirty-one per cent said "yes."[15] Two-thirds of this group found out either from the written notice pursuant to the state department regulation or from the caseworker. Respondents' knowledge of how to go about making an appeal was quite fragmentary at best. Of those who knew about the right of appeal and answered the question of how they would go about making an appeal (163 total), almost 60 per cent would ask the caseworker or the caseworker supervisor. Only 26 per cent said that they would contact the state department to request a hearing. Perhaps the argument could be made that since most clients do not have complaints against welfare administration, it is not that important that most do not know about

the right to appeal. This argument is meretricious theoretically and empirically. Of those who did say that they had complaints against their caseworkers, only 27 per cent knew of the right to a Fair Hearing.

Summarizing the AFDC recipient responses, despite the apparent efforts of the state department to provide a simple method of appeal that would by-pass the county administration and place the client in the guiding hands of the district supervisors, only 6 per cent of the entire sample knew of their right and knew enough to use the state department procedural route.[16] It clearly cannot be assumed that the lack of use of the Fair Hearing process in Wisconsin is because of proper welfare administration and a satisfied clientele. The AFDC respondents were either not adequately advised of their rights or they forgot.

G. The Future of Fair Hearings

The new federal regulations on Fair Hearings now provide that claimants must be advised of their right to a hearing, the method of obtaining the hearing, the right of representation (including counsel of their own choice), and any state provision for the payment of legal fees.[17] The notice must be given, with "oral explanation . . . to the extent possible," not only "at the time of application" but "at the time of any agency action affecting his claim."[18] This rule would not change the communication difficulties now encountered at the application stage. The real question is the meaning of the language "any agency action affecting his claim." Does this remove local official discretion as to what circumstances call for the giving of the notice? The federal

language speaks in absolutes; the HEW interpretation says, "any agency action affecting the claim for assistance, including change in or termination of assistance."[19] However, the new Wisconsin state regulations on Fair Hearings are ambiguously silent on this point. Wisconsin state officials doubt whether the federal reguatlions require notice of a right to appeal when the grant change is automatic or routine -- for example, when children reach a certain age and lose eligibility. In their view, the giving of notice in these circumstances would only riase "false hopes." Therefore, "agency action" is not "any action affecting" the grant but only an action that is arguable factually or legally. The denial of client requests for changes in assistance grants raises even more serious problems of discretion. Is this "agency action?" Does it "affect the grant?" Is it arguable factually or legally? Moreover, the discretion as to the giving of notice is still at the county level. The new Wisconsin regulations merely exhort the caseworkers to give the clients information about the program, to advise them of their rights, and to tell them that they will not be penalized if they appeal.[20] Lower-level administrative discretion has not been cut down. Neither the federal nor the state regulations affect existing communication problems.

Many of the problems of relying on the county caseworkers could be avoided by having the state notify clients directly by mail at frequent intervals. Notifications could include the form request for a Fair Hearing. It would also appear to be not too difficult for the state to notify clients, again by direct mail, as to certain obvious basic areas of the program. These changes should increase knowledge

about the program and at least lessen memory lapses on the part of clients. Probably the more serious and more intractable problems concern applicants who have been denied entry. We have no data as to whether and to what extent these people are advised of their rights or what this advice means to them -- whether they really understand what the caseworker is saying and whether they know how to evaluate their choices. Here, it would seem that the minimum that the state could do would be to spot-check by following up rejected applicants to find out what they were told and whether they understood what was said. It would probably be very helpful if temporary aid could be given pending appeals from denials of applications and from terminations; the time periods are not that long, from the point of view of the state, but may be critical from the point of view of the client.

These reforms, modest as they are, circumvent reliance on county administration. This follows the spirit, if not the letter, of federal and state law which insists that the state agency decide Fair Hearing appeals rather than the county agency. At the same time, there is no escape from the conclusion that reforms of this type reflect a lack of confidence in county administration and will disturb relations between the county departments and the state department. The state department claims to be in favor of Fair Hearings, but the question is how much and at what cost. Impediments to the excercise of this right occur at the county level: either the county workers are not telling clients or the clients do not understand or remember. To the extent that these impediments are intentionally created or acquiesed in by county administration, then state intervention will create serious conflicts between the state and county agencies.

Increasing knowledge about rights under the program only helps meet one of the social conditions for challenging government. The client still has to have resources and still has to balance gains against costs. Although clients are free to seek outside advocacy resources, very few do so.[21] At the time of this study, the advocacy resources were in fact the district supervisors. Reliance on advocates supplied by an organization to help one challenge the organization clearly raises problems of conflict of interest. To some extent this is mitigated by the fact that there are two organizations. The district supervisors represented state authority and supervisory control and the challenge was made to the county administration. Still, most of the district supervisors' time was taken up with liaison work and the development of county programs. It is significant that, in general, the older district supervisors had more praise for county administration and thought that the Fair Hearing process was working well enough. What they were saying was that the administration that they had a part in developing and shaping was functioning properly and there was no real need to improve remedies against "their" administration. Yet these were the people that the welfare clients in effect had to persuade to take their cases. In other words, the relationship between the district supervisors and the county administration cut both ways. The experience and personal knowledge of the supervisor helped him negotiate with the counties on behalf of the client. On the other hand, it could also lessen the ardor with which one expects an advocate to perform. The conflict in the supervisors' role was, of course, much more acute when county administration is following

state policy but the client thinks that the state policy is wrong.

The role of the district supervisors had not been thought through by the state department. The supervisors appeared to think of themselves as advocates on behalf of the clients and seemed to be committed to due process ideals, although in a vague sort of way. The state regulations were ambivalent. On the one hand, the regulations implied that the purpose is that of challenge.

> The fair hearing process . . . is a method of assuring to the client that the consideration to which he is entitled under the program will be given him, and on the same basis as to others in like circumstances. As a safeguard against arbitrary action, it provides him an opportunity for taking complaints and dissatisfactions to the state agency, where such grievances are resolved.[22]

On the other hand, the regulations seemed to imply a kind of educative discussion purpose.

> The hearing process should not, however, be considered solely as a device for determining the validity of county action in an individual situation, nor are the results that limited in scope. The hearing serves to interpret the program to dissatisfied persons; to bring into the discussion the client, the county agency, and the state department for a better understanding of the problems; to clarify policies and their application; and to test such policies in the administration of the program.[23]

The state seemed almost apologetic to the counties, as if Fair Hearings were designed to correct innocent mistakes only.

> Neither good nor bad administration is necessarily reflected in the number of fair hearings requested from any one county. As part of every county agency's interpretation of client rights and responsibilities, the availability of the fair hearing must be explained. A request for a hearing may be made by an applicant or recipient as a protest against some requirement which is not within the power of the county agency to adjust, and of which no interpretation locally has been accepted. . . The purpose of the hearing is <u>not</u> to pass upon the prior actions of the county agency. . ./<u>T</u>/he hearing is a continuation of the administrative process and not an adversary proceeding.[24]

Then, turning the concept of providing a remedy against government upside down, the state department admonished the counties themselves not to seek out Fair Hearings as a method of avoiding troublesome decisions.

> However, the fair hearing process is not a substitute for county administration and should not be expected to assume the responsibility for interpretation and decision.[26]

From the state department's point of view, the multi-purpose functions of the Fair Hearing process is perhaps defensible. County agencies, together with district supervisors, do process appeals to seek clarification. There are also cases where a county agency would prefer to be ordered by the state hearing examiner to do something which might be unpopular politically. But these functions served to blunt the challenge function. They compromised the role of the district supervisor; he was too close to the organization to be an effective advocate for the client. And the state department was not sure that this was what it wanted anyway.

The new state regulations remove the district supervisors from the Fair Hearing process.[25] Now, they receive notice of appeal and may advise county agencies "as to the possibilities for making a proper adjustment," but they no longer will serve as negotiators and pre-hearing adjudicators. The emphasis of the new regulations is for more formalized due process. This reflects the nationwide drive over the past few years for more procedural due process for welfare clients. The time periods for the Fair Hearing process are now to be very firm and very short. Hearings are to be conducted by an augmented staff of hearing officers. They do not have to be lawyers, but the formal

decisions are to be made by the Legal Section of the state agency based on the record and recommendations prepared by the hearing officers. County agencies are required to prepare, in advance of the hearing, a summary of the case and the basis of their administrative decision. The state decisions are to be binding on the state and county agencies; they are to be published and distributed monthly.

The new procedure removes the conflict of interest of the district supervisors. Their role probably would have become increasingly untenable if the number of Fair Hearings ever increased; they would have been devoting more time to investigations and less to liaison. Removing appeals from line administration lessens the risk of undue satisfaction that might be the case with the older supervisers. The old system was subject to the complaint that the supervisors were, in effect, making decisions about the administration that they helped to create and guide. On the other hand, the district supervisors were a valuable resource for the clients. We noted that they seemed to be pro-client; they were energetic about their cases; and the clients did quite well with the settlements obtained by the supervisors. It is very questionable whether the new hearing officers should fill this gap. Although they are supposed to "take an active part in eliciting facts and reviews," they are "responsible for conducting a fair impartial hearing." Impartiality cannot be combined with carrying the ball for welfare clients, as many of the district supervisors did.

The alternative resource suggested, in the "due process" model, is to provide independent advocates -- lawyers -- for welfare clients. The argument is that if clients are given effective advocates, they

need not worry about damage to the caseworker relationship. Their advocates will protect them from retaliation.[27] There is no doubt that in isolated instances, individual lawyers have been effective in securing client rights and with probably little damage to on-going relationships. But the problem is to provide an effective remedy against government on a massive scale, to be available for thousands of potential challengers. Notifying welfare clients that counsel is available if they should want to appeal will not make a significant difference in the appeal process. Are the individual grievances large enough to justify going to a lawyer? Can the local legal aid lawyer really protect the client in the future? If the bureaucracy is hostile to lawyers, will the client really be better off with the lawyer or the district supervisor? We have little direct evidence on this question, but we do have some experience to draw upon. In the administration of juvenile justice, making lawyers available and advising people of their rights, without more, accomplishes nothing. It is strongly suspected that intelligent waiver of counsel is unlikely for people in this position. The President's Commission on Law Enforcement and Administration of Justice would now require counsel in delinquency cases wherever "coercive action is a possibility. . . without requiring any affirmative choice by child or parent."[28] Yet there is evidence now that lawyers function poorly in the administration of juvenile justice. As public defenders for juveniles, they deal with cases routinely, perfunctorily, they plead the "bad cases" to bargain the "good ones," and are cynical and jaded towards their clients.[29] Private attorneys, retained on an individualized basis, are unfamiliar

with the non-courtlike procedures and atmosphere, are not welcome, do not like the work, and often fumble. Moreover, they cease their advocacy role. According to one authority, "/T/hey find it unprofitable to take an adversary posture in juvenile court" and "most likely will be coopted into a powerfully entrenched welfare system and be pressured into abdicating their adversary functions for the sake of minimizing conflict within the court system."[30] Dropping the advocacy role may be to the client's advantage. The juvenile court lawyer, states one commentator, "adapt/s/ the lesson that. . . over-zealous advocacy, or even advocacy that is standard and proper from the standpoint of the legal profession, is not in the long run to the advantage of the client who continues to be affected detrimentally by administrative actions that for the time being are beyond the reach of the courts to remedy."[31]

These same considerations apply to the introduction of lawyer advocates into the administration of public assistance. Many clients still will not go to lawyers; their claims will be too small. As in the juvenile courts, lawyers may not be very competent in the Fair Hearing process. The law is quite vague in many areas, administrative discretion is broad, and cases may be difficult to establish factually. Lawyers may be unfamiliar with and fumble in the loose, unstructured administrative process and its quite informal hearing. Lawyers may be decidedly unwelcome. If the present inadequacies of the Fair Hearing process are due in part to lack of official commitment to this remedy, then one would expect less than joy on the part of county agencies at the prospect of facing independent lawyers. The introduction of lawyers in the commercial world and in juvenile justice

is viewed as a hostile act; the use of lawyers in welfare administration would probably produce a similar reaction on the part of county caseworkers.[32] And clients may still be vulnerable to retaliation in subtle ways beyond the reach of lawyers. Edward Sparer, a lawyer very experienced in the difficulties of representing welfare clients, points out the danger that the on-going relationship presents to the welfare client lawyer.

> /The lawyer/ needs to remember that he cannot afford, for his client's sake, to make an enemy of the public social worker. Although antagonisms to the worker's decision will often result, the lawyer's function should not be to undermine the welfare worker and inspire needless hostility. The welfare worker, after all, remains with the client if the lawyer wins the latter's case. There are ways other than the flat denial of eligibility to make a welfare recipient's life intolerable. Indeed, these may be beyond the redress of the legal process.[33]

In practical day-to-day cases, advocates like the district supervisors might be far more useful to the average complainer than independent counsel.

On the other hand, lawyers have been used with apparent success in the Fair Hearing process when welfare clients are organized. There is a nationwide movement to organize those on relief into a kind of union to increase their bargaining power. Welfare rights groups have been formed in various cities (including Milwaukee and other Wisconsin cities); efforts to form a national union are being made by the National Welfare Rights Organization, based in Washington, D.C. These groups engage in a variety of political activities to publicize their demands and increase welfare benefits. There was a national march on Washington to protest pending restrictive welfare legislation. Local groups are engaging in

active lobbying and demonstrations.[34] In New York City they are using the Fair Hearing process with seemingly considerable success. A city-wide Coordinating Committee of Welfare Recipients, representing most of the city's 90 welfare-action groups, has welded together a massively based, systematic drive to demand client rights through Fair Hearings. This litigation campaign has been coordinated by lawyers on the staff of the Columbia University School of Social Work's Center on Social Welfare Policy and Law. The Committee compiled a list of minimum needs for families on relief. With the lawyers' help, families requested missing items to be supplied, and if refused, filed demands for Fair Hearings.[35] Before the Committee began its campaign in 1965, in New York City, 109 welfare clients filed formal appeals and there were 14 hearings. In 1967, during "two unusually active months, some 2,000 applications for hearings had been filed, 800 additional requests for hearings were in preparation, 300 hearings had occurred at the rate of approximately 50 per week, and about $300,000 had been paid out during a single fortnight in amounts varying from $300 to $1,000 to settle claims in advance of the scheduled hearings."[36]

The group approach to litigation has been used successfully by minority groups in other contexts where individual rights to litigate have proved incapable of securing substantive rights.[37] Its advantages are obvious. Many if not all of the hurdles to making an effective challenge are overcome by group litigation. But it should also be clear that this is no easy road to securing civil justice for welfare clients. New York City has had a long experience in organizing welfare clients and other poverty populations. Their success has been achieved

at great efforts by unusually skilled and dedicated activists. Moreover, they have had to maintain constant pressure among the poor to sustain the organization. How long the New York City effort can continue is unknown, and whether it can be successfully applied in other parts of the country is also problematic, especially in the less urbanized areas. AFDC recipients, contrary to popular misconceptions, are a transitory group: the median time on the program is just a little over two and a half years. How widespread is their willingness to identify themselves with the most stigmatic of all of our welfare programs? Still, organizations are growing and the poor are becoming more politically conscious.

No doubt the immediate future will bring a many-sided attempt to strengthen the welfare client's ability to challenge administrative decisions. In some cases, public welfare agencies will be called upon to recognize the inadequacies in the present system and to make internal corrections themselves. In other instances, demands for reform will arise from the outside--from the militant left, and from the new breed of poverty organizers and lawyers. According to social work philosophy, these changes should be welcomed. This is rehabilitation and the welfare clients will be showing that they have the capacity to help themselves. Realistically, however, these demands will create a serious challenge to public agencies. Responses to the challenge will indicate the nature of their commitments and values.

Footnotes

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[1]Francis A. Allen, "Law and Psychiatry: An Approach to Reapprochement," in Roberts, Halleck, & Loeb (eds.), Community Psychiatry (U.W. Press 1966), p. 189-190.

[2]Some examples are collected in Handler,"Controlling Official Behavior in Welfare Administration,"54 Calif. L. Rev. 479 (1966). The constraints against challenging in the criminal and juvenile justice systems are well known. See Handler,"The Juvenile Court and the Adversary System: Problems of Function and Form,"1965 Wis. L. Rev. 7.

[3]Bernard W. Scholz,"Hearings in Public Assistance,"Social Security Bulletin, Vol. II, No. 7, July 1948, pp. 1-2

[4]U.S. Department of Health, Education and Welfare, Handbook of Public Assistance, Part IV, s 6200.

[5]Ibid. Recent administration changes in Fair Hearings are discussed in Part G of this article.

[6]Wis. Stat. s 49.50(8) (Supp. 1961).

[7]Div. of Public Assistance, Wis. State Dept. of Public Welfare, Ch. IX, as amended (1963). These regulations have now been changed. See Part G.

[8]Information as to the role of the district supervisors was obtained from in-depth interviews of 9 of the 10 supervisors plus one former supervisor during 1967.

[9]Div. of Public Assistance, Wis. State Dept. of Public Welfare, Ch. IX-1, as amended (1963).

[9a]For a history of this struggle, see Handler & Goodstein, The Legislative Development of Public Assistance, 1968 Wis. L. Rev. 414.

[10]One of the costs of litigation not dealt with which is very serious is the lack of aid during an appeal from a discontinuance. Another cost not dealt with is the use of an attorney.

[11]The claims in the remaining 6 per cent of the cases were scattered among "temporary suspensions of grant" (9 cases), "delay in processing application" (8 cases); "protesting a particular dicision of county welfare department" (e.g., order to dispose of a car) (4 cases), and "refusal to accept an application" (2 cases).

[12]At least only a single issue appeared in the record.

[13]See, e.g., Reich, Individual Rights and Social Welfare: The Emerging Legal Issues, 74 Yale L.J. 1245 (1965); Handler & Rosenbeim, Privacy in Welfare: Public Assistance and Juvenile Justice, 31 Law & Contemp. Prob. 377 (1966).

[14]The selection of the middle-sized and rural counties was based on the opinions of senior officials in the State Department and some of the district supervisors as to the quality and character of the county welfare administration. One of the middle-sized and one of the rurals were considered to be liberal or progressive in adminstration, the other middle-sized and rural, tradintional or conservative, and the third rural in-between. In Milwaukee and the middle-sized counties, the samples were randomly selected. In the three rural counties, all recipients were solicited. The overall average response rate for the six counties was about 80 per cent. The total usable response by county were as follows:

Milwaukee	M-1	M-2	R-1	R-2	Total
302	179	86	62	57	766

[15]Those figures are fairly close to those reported by Professor Scott Briar in Welfare From Below: Recipients' Views of the Public Welfare System, 54 Calif. L. Rev. 370 (1966). Professor Briar's sample was 92 AFDC-U recipients. These were intact families (husband unemployed) admitted quite recently to the program. Sixty per cent said that they

were not advised about the right to appeal. On the basis of his own observations, Professor Briar is of the opinion that most of the applicants were advised of their right to appeal but that it was not meaningful in their situation.

[16]Only 43 respondents knew about the right of appeal and when asked how they would go about making an appeal, gave one of the following answers to an open-ended question: send the form to the state department or write a letter or call or otherwise make an appointment with the department. In other words, the 6 per cent total did not depend on the formally "correct" answer--send the form to the state department--but only if the client knew enough to somehow make contact with the state department and thus avoid total reliance on county welfare officials against whom he was appealing. This clearly seems to be the purpose of the state department regulations; the form is just to make the appeal even easier for the client.

[17]Handbook of Public Assistance, Part IV, 6200 (t), 6300 (j), February 8, 1968.

[18]Ibid.

[19]Ibid.

[20]Div. of Family Services, Wis. State Department of Health and Social Service, Ch. IX, p. 2, as amended (1968).

[21]In the four programs, there were 568 hearings. Attorneys appeared in 12 per cent. The success rate for those represented by attorneys was about the same as for those who appeared without attorneys.

[22]Div. of Family Services, Wis. State Department of Health and Social Services, Ch. IX, as amended (1963).

[23]Ibid.

[24]Ibid.

[25]Ibid. as amended (1968).

[26]District supervisors have reported instances where they felt that they had to protect clients who had appealed successfully.

[27]President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 87 (Washington: U.S. Government Printing Office, 1967).

[23] See Platt, Schechter, & Tiffany, "In Defense of Youth: A Case Study of the Public Defender in Juvenile Court," unpublished manuscript, Center for Studies in Criminal Justice, University of Chicago, 1968.

[29] Platt & Friedman, "The Limits of Advocacy: Occupational Hazards in Juvenile Court," U. of Pa. L. Rev. (1968).

[30] B. James George, Gault and the Juvenile Court Revolution 121-22 (Ann Arbor, Michigan: Institute of Continuing Legal Education, 1968).

[31] Businessmen generally use lawyers in disputes only as a last resort and when they no longer want to deal with each other. See Macaulay, "Non-Contractual Relations in Business: A Preliminary Study," American Sociological Review, Feb. 1963, Vol. 28, No. 1, pp. 55-67. Juveniles, picked up by the police, can get better treatment by cooperating with the police; one of the ways of not cooperating is to ask for a lawyer. See Handler, "The Juvenile Court and the Adversary System: Problems of Function and Form," 1965 Wis. L. Rev. 7.

[32] Sparer, The Role of the Welfare Client's Lawyer, 12 U.C.L.A. L. Rev. 361, 378 (1965).

[33] For a discussion of this development, see "Unions for People on Relief," U.S. News & World Report, Oct. 30, 1967, p. 36.

[34] Ibid., p. 37.

[35] Gellhorn, "Poverty and Legality: The Law's Slow Awakening," 9 William & Mary L. Rev. 285, 300 (1967).

[36] Ibid., p. 300, n. 36.