Complaining after Claiming: Fair Hearings after Welfare Reform

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Over 30 years ago, the U.S. Supreme Court granted welfare clients the right to an administrative hearing before the termination of their benefits. Fair hearings have since become a mainstay of the welfare bureaucracy, but there has been scant empirical research on them, particularly since welfare reform, which eliminated the entitlement status of welfare while emphasizing clients' obligations. This article reports on an empirical study of the fair hearing systems in New York, Wisconsin, and Texas. The findings indicate that fair hearings are rarely used but frequently successful. This article explores why clients so infrequently rely on fair hearings.

A key component of citizenship is the right to dispute arbitrary or illegal government action. Over 30 years ago, the U.S. Supreme Court, in *Goldberg v. Kelly* (397 U.S. 254 [1970]), recognized a welfare client's right to complain when denied benefits. The Court rooted the right in this country's basic document of citizenship, the Constitution, and in the principles of due process. Noting that "it may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity'" (263, n. 8), the Court held that due process requires adversarial administrative hearings ("fair hearings") prior to the termination of benefits. Although grounding its decision in the due process clause, the Court also emphasized the connection between need and citizenship, observing that "by meeting the basic demands of subsistence," the state

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ensures that the needy can "participate meaningfully in the life of the community" (265). Welfare thus was not "mere charity" but a way to "promote the general Welfare, and secure the Blessings of Liberty to ourselves and our posterity" (265).

Since *Kelly*, fair hearings have become a fixed feature of the welfare bureaucracy. They provide a voice for the poor within the welfare system. Powerless in their ability to influence the making of policy, clients can participate in the implementation of policy by claiming their right to benefits and by voicing grievances or complaints (Zemans 1983; Soss 2002). By challenging the very state on which they are dependent, clients also assert their dignitary rights.

This dynamic was altered by the welfare system's transformation in 1996. In keeping with *Kelly*, and until welfare reform, welfare was considered an entitlement. Although the right to appeal was underused (Lipsky 1984; Handler 1986), the entitlement notion is consistent with a rights-based view of welfare. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; U.S. Public Law 104-193) eliminated the federal entitlement status of welfare and, hence, the statutory basis for the principle that the poor have a right to government benefits. Instead of rights, clients now have obligations to work or engage in behaviorally changing activities, such as drug counseling or parenting classes (Schram 2000; Handler 2005). Caseworkers have few reciprocal obligations. Instead, the 1996 law grants them more discretionary power to sanction clients by reducing or eliminating grants when clients fail to meet obligations.

Fair hearings are the only formal mechanism by which clients may challenge agency decisions. Although welfare is no longer an entitlement under PRWORA, Congress still requires hearings. However, little is known about fair hearings under welfare reform and, in particular, about whether they are an effective remedy in a newly constituted welfare bureaucracy that emphasizes clients' obligations.

This study is the first in many years to analyze administrative data on fair hearings. It seeks to answer the following questions: How often do clients use the fair hearing process, and How often do they win? How is the increased emphasis on clients' behaviors and the use of sanctions manifested in the fair hearing system? Are there any barriers among clients that may prevent appeals? The article begins to address these questions by reviewing past studies on fair hearings; all of these were conducted in the 1960s and 1970s. These early studies provide a helpful context for evaluating fair hearings today. The current article then analyzes 2002 state administrative data from New York, Wisconsin, and Texas to determine rates of appeals and outcomes; particular attention is devoted to sanctions and work-related issues.

Historical Background

Fair hearings have always been a part of the welfare system. The implementing statute for the Aid to Dependant Children (ADC) program, the Social Security Act of 1935 (U.S. Public Law 74-271; 49 Stat. 620), included a requirement that states establish fair hearing systems as a condition of receiving federal funds. Hearings served several purposes. They functioned as a check on the power of caseworkers, who had considerable discretion in granting benefits (Scholz 1948). They were also a mechanism for "detecting and correcting improper administration" (Handler 1969, 18). In the early years of the ADC program, as individual counties came under state supervision for the first time, fair hearings helped to standardize the administration of benefits (Handler 1969).

From the beginning, fair hearings were an insufficient but sometimes valuable remedy for clients. Studies conducted prior to *Kelly* reveal a system seldom used by claimants, but that system reversed agency error about half of the time when it was employed. Joel Handler's (1969) early study covering Wisconsin's fair hearing system between 1945 and 1965 finds that only 1.2 percent of denied applicants and 0.4 percent of discontinued recipients appealed adverse decisions. Overall, clients who appealed decisions (through a hearing) won about 60 percent of the time. Applicants won 37 percent of the time, with an overall success rate of 48 percent. Alexander Bell and G. Todd Norvell's (1967) study of the Texas hearing system finds a similar combination of low usage and relatively high reversal rates. Out of 141,286 recipients whose applications were denied or whose grants were lowered or terminated, only 693 (0.49 percent) filed appeals. Reversal rates ranged from a low of 37 percent to a high of 67 percent. The average reversal rate was 51.4 percent.

Handler's (1969) study offers some possible explanations for the low appeal rates. He finds that most recipients (about two-thirds) were unaware of their right to appeal. They relied instead on negotiations with caseworkers and supervisors to resolve disputes. Clients whose grants were terminated or denied were three times more likely to request fair hearings than ongoing clients concerned with their grant's sufficiency. This suggests that clients feared disrupting their ongoing relationships with caseworkers.

Fair hearing utilization improved somewhat after the U.S. Supreme Court's decision in *Kelly*. That ruling made it easier for clients to pursue appeals by providing clients with the option of pretermination hearings. A large-scale study conducted in 1978 (Hammer and Hartley 1978), again using the Wisconsin fair hearing system, compared statistical data on fair hearings held between 1965 and 1976. The researchers find a wide fluctuation in appeal rates in the years after *Kelly* was decided. In

Milwaukee the appeal rate for terminations of aid was 1.09 percent between 1969 and 1973, 3.99 percent in 1974, and 1.8 percent in 1975–76. Rates of appeal for denials in Milwaukee showed even wider fluctuations, ranging from 10.40 percent in 1974 to 2.2 percent in 1975–76. Appeal rates in other urban areas were 2.43 percent for terminations of aid and 7.43 percent for denials of aid. Appeal rates in rural areas were 2.61 percent for terminations of aid and 8.9 percent for denials. While still low, the rates of appeals filed after *Kelly* in both urban and suburban areas during the time period studied were higher than the range of rates (0.4–1.2 percent) found in studies conducted before the decision. The researchers attribute the discrepancy to methodological differences.

Ronald Hammer and Joseph Hartley (1978) report considerable variation in the rates of success for appeals. Rates dropped substantially in Milwaukee from 79.37 percent before *Kelly* to 43.07 percent after it. In other urban areas, rates increased from 28.9 (before) to 64.9 percent (after). In rural areas, rates increased from 40.95 to 45.97 percent. The overall success rate across all areas (52.65 percent) was near that found by Handler (1969; 48.4 percent). However, the number of no-shows at hearings increased after *Kelly*, growing in urban centers, such as Milwaukee, from 3.3 percent before the decision to 25.18 percent afterward.[1] Hammer and Hartley (1978) suggest that the increase in no-shows at hearings resulted from a lack of confidence in hearings as a tool for correcting mistakes. They also suggest that the increase was related to the more daunting and formalized hearing requirements in the period after *Kelly*, concluding, "The new formal hearings were not the effective remedy they had been portrayed to be" (Hammer and Hartley 1978, 200).

In his 1974 study of fair hearings in New York City, Daniel Baum (1974) finds a 5–20 percent rate of appeal. Similar to Hammer and Hartley, Baum finds a high rate of no-shows; approximately 50 percent of hearings were never conducted. Baum observes that cancellations usually resulted from the client's decision to withdraw the hearing request. Baum also describes extensive bureaucratic resistance to fair hearings, with welfare officials convinced that clients used the fair hearing process "as a new hustle" (1974, 75). As one city welfare official at the time put it to a *New York Times* reporter, the fair hearing regulations amount to "an uncivil rape of the public treasury" (Baum 1974, 65).

Another study conducted after the *Kelly* decision focuses on welfare caseworker attitudes toward hearings, revealing a bureaucracy that, while not as overtly hostile as Baum reported, was ambivalent about the fair hearing process (Scott 1972). Robert Scott reports on a 1972 survey of a national sample of welfare caseworkers and finds that while 56 percent thought hearings were important to the administration of welfare, only

13 percent thought they were essential, and nearly a third (31 percent) were undecided or ambivalent (Scott 1972).

In sum, despite the promise of *Kelly,* fair hearings fell short of advocates' expectations. While clients' rates of success demonstrate that fair hearings could and did work as a mechanism for correcting agency error, appeal rates remained low.

Commentators suggest various reasons why fair hearings are underutilized, focusing on bureaucratic and client limitations (Handler and Hollingsworth 1970; Mashaw 1971, 1974; Hammer and Hartley 1978; Handler 1986). Welfare bureaucracies were organized to deflect and discourage complaints even while they generate mistakes and errors (Mashaw 1974; Handler 1986). Their environments render clients powerless, dependent, and vulnerable; clients are thus unlikely to assert their rights (Mashaw 1974; Handler 1986). *Kelly's* more formal hearing requirements also created obstacles for clients, who often lack the education, skills, and resources to navigate the fair hearing process (Mashaw 1974; Hammer and Hartley 1978). Clients are often unaware that mistakes have been made, and those who are aware of errors frequently view fair hearings as ineffective (Handler and Hollingsworth 1970). In short, the right to a hearing does not alter the basic balance of power between client and agency. Nor do clients always have the knowledge and resources to navigate the hearing process.

Despite this unpromising start, fair hearings have become an integral part of the welfare bureaucracy. For example, Cesar Perales (1990) reports that 1,300 appeals were filed in New York in 1969. Twenty years later, in 1989, that number increased to 150,000 (Perales 1990), although there were fewer recipients in 1989 than in 1970, the year in which *Kelly* was decided (USDHHS 2000). Since the mid-1970s, however, there has been scant empirical research on fair hearings. Little is known about their effectiveness over the past several decades and, particularly, since the enactment of welfare reform.

Research Design

The purpose of this study is to provide a preliminary snapshot of the fair hearing system in the period since welfare reform. Particular attention is devoted to the frequency of client appeals and to the outcomes of those appeals. Three states, New York, Wisconsin, and Texas, are studied because they provide a mix of social, political, and geographical cultures, as well as a blend of administrative appeal structures. New York and Texas, respectively, have the second and third highest numbers of Temporary Assistance for Needy Families (TANF) recipients (California has the highest). Wisconsin ranks 26th out of 54 states and territories (USDHHS 2003).

In compliance with PRWORA, all three states impose time limits for

cash assistance and strict work requirements. All three states require clients to participate in employment services programs, such as vocational training, job search and placement, and on-the-job training. Those who cannot find a job are given a community services placement. In Texas, state rules dictate benefit durations according to levels of education and experience. The most educated and experienced clients receive 1 year of assistance. The least educated receive 3 years (Texas Health and Human Services Commission 2005). When the time limit is reached, parents (but not children) lose their TANF benefits. Benefits are limited to a total of 5 years for children. New York's 5-year limits apply to both parents and children (New York State Office of Temporary and Disability Assistance 2004).[2] Both states impose graduated partial family sanctions of 1, 3, and 6 months for violation of the work rules.[3]

Wisconsin Works (W-2) is a work-based program with a time limit of 2 years (Wisconsin Department of Workforce Development 2004). Wisconsin describes the W-2 program's approach to assistance as the W-2 employment ladder. There are four rungs on this ladder. They include full-time, unsubsidized employment, a government subsidized job in the private sector, community service jobs, and W-2 Transition (W-2T), designed for those clients not yet ready for employment. These W-2T jobs require a mix of volunteer work, education, and training activities, and the combination totals 40 hours per week (Wisconsin Department of Workforce Development 2004). Sanctions for violations of the work rules consist of payment reductions: for every hour missed in assigned work and training activities without good cause, the client's grant is reduced by $5.15 (Wisconsin Department of Workforce Development 2004).

Although PRWORA requires states to maintain a hearing system, each state operates its own system free from federal oversight. New York and Texas have maintained the fair hearing systems in place before welfare reform. Under those systems, clients are entitled to challenge any denial, discontinuance, or reduction in assistance. Clients must be provided with timely and adequate notice of any adverse action, and such notice must include information about their right to appeal (Texas Administrative Code, title 40, rule 79 et seq.; New York Codes, Rules, and Regulations, title 18 sec. 358 et seq.). Clients have 60 days to appeal sanctions, and recipients who request a hearing within 10 days continue to receive their TANF grants during the appeal. Hearings are held by the state and consist of a review of decisions made by the local agency.

Since welfare reform, Wisconsin is the only of these three states to change its appeals system substantially. In Wisconsin, the first level of hearings, called fact-findings, is held, not by the state, but by the local agency that made the initial decision (Wisconsin Department of Workforce Development 2004). Wisconsin is also the first and only state in the country to privatize its fair hearing system; local agencies are a mix of private nonprofit and for-profit organizations. Reductions, termina-

tions, and denials of assistance can all be appealed to the local agency within 45 days of the decision. Unlike in Texas and New York, clients in Wisconsin do not receive aid until an appeal is resolved. This is a major departure from the pretermination hearing procedures required under *Kelly*. The client and agency have the right to appeal a decision to the Wisconsin Department of Administration, Division of Hearings and Appeals. This second-level review is limited to matters raised in the record of the initial local agency hearing.

This article uses multiple sources of administrative data gathered from the governmental entities operating each state's TANF program. Data were gathered from 2002, the most recent calendar year in which a full set of data are available. They include monthly caseload statistics, as well as data on adverse notices, the number of hearings requested, the number of hearings held, and outcomes for families receiving TANF.

Appeal rates are calculated among the total population of families receiving assistance and among the population of applicants and recipients whose grants were denied, reduced, discontinued, or changed. All members of this second population were advised that they could request a fair hearing to contest the decision.

For the first calculation, monthly appeal rates are compared with the number of families receiving assistance each month. They are expressed as the percentage of fair hearings requested each month averaged over a 12-month period, January 2002–December 2002. The percentage of clients who failed to follow through (no-shows) or who withdrew their request for a hearing (withdrawals) is also calculated.[4] This is expressed as a percentage of hearing requests.

Although welfare agencies, such as the New York City Department of Human Resources, use this method to calculate appeal rates, such an approach excludes applicants who were denied benefits. This is a limitation of the method because individuals in that group are entitled to request a fair hearing. The method also focuses on the general population of recipients rather than those who have a potential appealable complaint. The method's advantage is uniformity. The measures of the number of fair hearing requests and the number of recipients in any given month are calculated in the same manner across states.

The second method for calculating appeal rates focuses more narrowly on the population of recipients and applicants who received an adverse notice from the agency. We use the term "adverse notice" to describe written notices advising clients of a denial, reduction, discontinuance, or other change in the grant. These notices are routinely the triggering events for appeals. They include the reasons for the agency's action and instructions on how to request a hearing. Appeal rates are calculated by dividing the number of hearings by the number of notices sent. If available, administrative data are analyzed to calculate the rates

of appeals and outcomes for work-related sanctions. These rates are compared with other categories of appeals.

This calculation method is limited because adverse notices are both underinclusive and overinclusive. They are underinclusive because clients who do not receive notices can and do request fair hearings when they think that the agency has acted incorrectly.[5] Data resulting from adverse notices are overinclusive because of the increased bureaucratization of notices. Computer-generated notice systems are routinely used to advise clients of adverse actions (e.g., closings, denials) and to communicate more routine (sometimes positive) information about the client's grant. While the latter communications can contain errors, there are fewer reasons to appeal. The rate of appeal may be higher among the subgroup of clients who receive the negative notices.[6] Notwithstanding these limitations, all of these notices share a common and significant denominator: they advise clients of their right to request a fair hearing and the procedures for making such a request. In short, notices are based on each agency's definition of what actions are appealable. Thus, notices are appropriate and useful for calculating appeal rates.

Fair hearing outcomes are analyzed to determine the rates at which client appeals succeed. For several reasons, no-shows and client withdrawals are excluded from the calculation of outcomes. First, both no-shows and withdrawals indicate a client's decision not to pursue a hearing request and to withdraw, either formally or informally, from the hearing process.[7] Second, New York, Texas, and Wisconsin do not track outcomes for these categories (Barbara Stegall, Texas Department of Human Services, e-mail communication, March 2, 2004; Paul Saeman, Wisconsin Department of Workforce Development, personal communication, December 2, 2004; Mark Lacivita, New York State Office of Temporary and Disability Assistance, personal communication, December 30, 2003). This could bias results in favor of the agency or the client.[8] Success is defined across the three states as one of the following outcomes: (1) a settlement is reached in favor of the client, (2) the agency withdraws the adverse notice that triggered the hearing request, or (3) a hearing officer decides to reverse the agency's decisions.[9] Success rates are based on the following formula:

$$\frac{s\ (\text{settlements}) + w\ (\text{agency withdrawals}) + r\ (\text{reversals})}{s + w + r + a\ (\text{agency affirmed})}.$$

Where available, data are collected by geographic region within the states to allow for comparisons of appeal and success rates across major urban and less populated areas. In Texas and Wisconsin, the regions reflect geographic distinctions made by the state agency. For example, in Texas, the Health and Human Services Commission (formerly the Texas Department of Human Services) divides the state into 10 separate

regions. Based on the ranking of the largest city in the region (ranked by population), as reported in the 2000 census, three regions are chosen for analysis: the region containing Texas's largest city, Houston (population 1,953,631); the region containing its fifth largest city, El Paso (population 563,662); and the region containing its forty-ninth largest city, Edinburg (population 48,465). The Edinburg region is a primarily rural area that shares a valley with Mexico (Texas State Library and Archives Commission 2004).

Wisconsin divides its state into seven different regions. The following regions are chosen for analysis: the Milwaukee region, which includes Wisconsin's largest city, Milwaukee (population 596,974); the region that includes Green Bay, the third-largest city (population 102,767); and the region surrounding Waukesha, with a population of 64,825 (Wisconsin Department of Administration 2004).

In New York, data are available for individual counties. The following counties are chosen for analysis: the collective counties of New York City (population 8,000,827); Suffolk County, the largest suburban area in the state (population 1,419,369); and Albany County, with a population of 294,565 (U.S. Census Bureau 2001).[10]

Findings

How Often Do Clients Appeal?

In Texas, which has an average monthly welfare caseload of 131,127, 4,667 hearings were held in 2002. The statewide appeal rate was 0.29 percent (table 1). In New York, which has an average monthly caseload of 157,730 and 88,966 fair hearing requests, the 2002 statewide appeal rate was 4.6 percent (table 1). Wisconsin has an average monthly caseload of 13,125 and 727 fact-finding requests. The 2002 statewide appeal rate in Wisconsin was 0.46 percent (table 1). Wisconsin, which privatized parts of its fair hearing system, has a slightly higher appeal rate than Texas. New York generates the most appeals.

The contrast between Texas and New York is especially striking. Although the New York and Texas welfare populations are similar in size, New York held 88,966 hearings in 2002. Ninety percent (or 80,520) of these were held in New York City. In contrast, Texas held less than 5,000 hearings. The region containing Texas's largest city, Houston, held only 714 hearings. Compared with New York, the equivalent number of hearings in Houston (adjusting for the differences in the population of recipients between New York City and Houston) would have been 2,856.

Regional data, available in New York and Wisconsin, show little variation in appeal rates within Wisconsin and substantial variation within New York (table 2). In Wisconsin, Milwaukeeans are only slightly more likely to appeal (0.51 percent) than clients in the rest of the state (0.44

Table 1

APPEAL RATES BY POPULATION, 2002

2002	No. of Families	No. of Hearings	Appeal Rate
Texas:			
January	133,191	308	.23
February	130,740	309	.23
March	129,781	373	.28
April	128,273	404	.31
May	127,439	338	.26
June	127,340	329	.25
July	128,332	436	.33
August	129,813	425	.32
September	131,683	424	.32
October	135,602	535	.39
November	135,377	426	.31
December	135,960	360	.26
Appeal rate			.29
New York:			
January	172,902	8,371	4.8
February	168,102	7,553	4.4
March	164,085	7,596	4.6
April	159,921	7,964	4.9
May	159,303	7,568	4.7
June	156,032	6,952	4.4
July	153,749	7,292	4.7
August	153,699	7,430	4.8
September	151,450	7,713	5.0
October	152,034	7,436	4.8
November	151,331	6,706	4.4
December	150,159	6,385	4.2
Appeal rate			4.64
Wisconsin:			
January	12,274	105	.85
February	12,360	51	.41
March	12,479	74	.59
April	12,673	65	.51
May	12,727	84	.66
June	12,669	85	.67
July	13,087	84	.64
August	13,349	66	.49
September	13,657	49	.35
October	14,038	24	.17
November	14,049	20	.14
December	14,141	20	.14
Appeal rate			.46

percent). In contrast, New York City, where nearly two-thirds of TANF families reside, generates 90 percent of the appeals. The appeal rate in the city (6.8 percent) is significantly higher than the 1.1 percent appeal rate in the rest of the state.

Among the population of Texas clients who received adverse notices, the rate of appeal is 0.81 percent (table 2).[11] Regional data reveal few differences between rural and urban areas in this state. Both Houston

Table 2

State and Regional Percentage Appeal Rates by Population and by Adverse Notice

Location	State and Regional Percentage Appeal Rates	
	Population	Adverse Notice
Texas	.29	.81
Houston[a]		.66
El Paso[a]		.66
Edinburg[a]		.47
New York	4.6	14[b]
New York City	6.8	21[b]
New York, excluding New York City	1.1	3.5
Wisconsin	.46	.06
Milwaukee	.51	.11
Wisconsin, excluding Milwaukee	.44	.02

[a] Regional data on appeal rates by population are not available.
[b] The upper bound estimate for adverse notices sent by New York City was used for these calculations. See discussion in n. 13.

and El Paso have identical appeal rates at 0.66 percent. Edinburg, a rural area, is not far behind at 0.47 percent.

In Wisconsin the statewide appeal rate based on adverse notices is 0.06 percent. The appeal rate is 0.11 percent in Milwaukee and 0.02 percent in the rest of Wisconsin (this was the only geographic distinction available; see table 2).[12]

The highest rate of appeal resulting from adverse notices is in the five counties of New York City. The city's appeal rate is between 21 and 35 percent, while it is 3.5 percent in the rest of the state (the only geographical distinction available; see table 2).[13]

Appeal rates are also calculated as a percentage of adverse notices sent for violations of the work requirements. Texas sent clients 69,663 notices of sanctions. As a result, 1,933 clients requested hearings involving violations of the work rules, for an appeal rate of 2.9 percent (not shown in table 2). In Wisconsin, 23,903 clients were sanctioned in 2002, with 529 requests for fact-findings on work-related issues and an appeal rate of 2.2 percent.[14] A comparison of these rates with those in table 2 suggests that clients are more likely to appeal work sanctions than other denials, reductions, or terminations. (Comparable data are not available for New York.)

In each state, a substantial portion of hearings involves conflicts between clients and the agency over work requirements. In Wisconsin, 71 percent of all hearings are about work requirements (most of the rest, or 14 percent, are about child care). More than a third of all hearings in Texas, or 1,733 out of 4,667 hearings, involve work rules. In New York, 21 percent of all hearings are related to employment issues. This

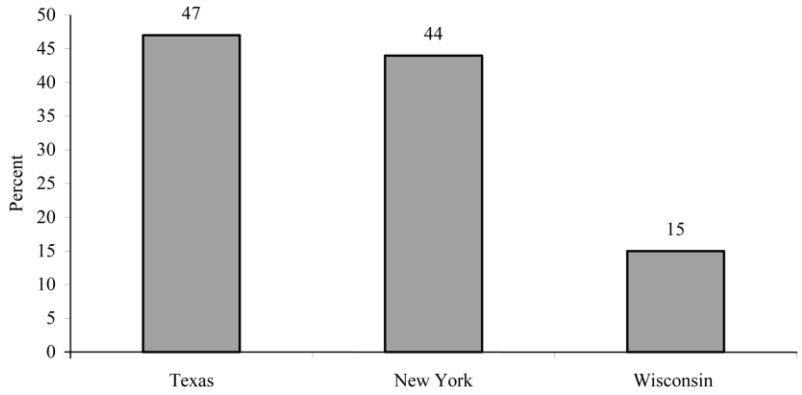

FIG. 1.—Hearings dismissed for client failure to attend

difference between Texas and New York reflects the large number of hearings held in New York City, not a lack of attention to work-related issues.

In Texas, New York, and, to a lesser extent, in Wisconsin, clients frequently request hearings but fail to follow through on them (fig. 1). In Texas, nearly half (47 percent) of all requests were dismissed when clients did not appear at the hearing. The rates are similar in New York, which reports a default rate of 44 percent. In Wisconsin, fewer clients (15 percent) abandoned their fact-finding requests.

In sum, while appeal rates vary, it is generally true that few clients requested fair hearings in 2002. This is true whether rates are calculated by the total population or based on adverse notices. Moreover, substantial numbers of clients abandoned their requests for hearings. Clients in Texas and Wisconsin appear more likely to appeal sanctions than other types of adverse notices, albeit still at very low rates, and the current fair hearing system devotes a considerable amount of resources to resolving work-related issues.

What Are the Outcomes of Appeals?

In all three states, many cases are resolved prior to or at the hearing. Often clients agree to withdraw their hearing requests after speaking to their caseworker. The worker may restore benefits or convince the client that there is no basis for an appeal. The withdrawal rates are 13 percent in New York, 24 percent in Texas, and 16 percent in Wisconsin (fig. 2). However, as noted above, because the administrative data do not indicate whether the outcome is favorable to the client or not, withdrawals are not included in the calculation of success rates.

Clients who persist in the process and attend the hearing often suc-

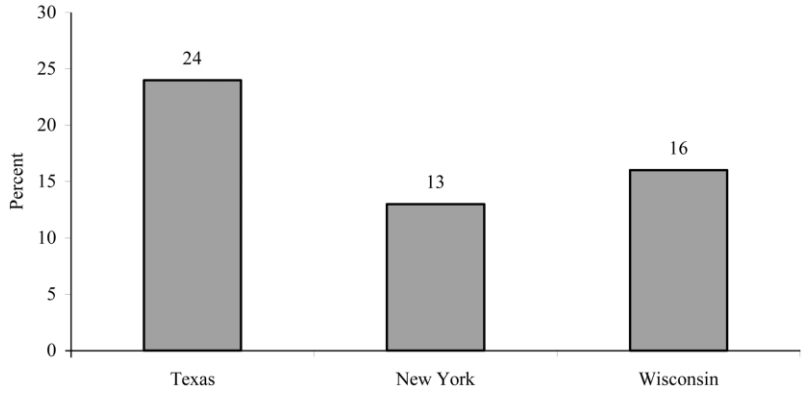

FIG. 2.—Hearing requests withdrawn by clients

ceed. This is true whether the agency settles the case and withdraws the adverse notice or a hearing officer issues a decision on the merits. In Texas the success rate is 40 percent. It is 47 percent in Wisconsin.[15] In New York, clients succeed 79 percent of the time (fig. 3).

In comparing major urban centers and the examined less populous regions (fig. 4), both New York and Wisconsin show substantial regional variations in client success rates. Milwaukeeans, with a win rate of 56 percent, fare much better than clients in Waukesha, a suburb outside Milwaukee. Clients in Waukesha win only 10 percent of the time. The rate in Green Bay is 30 percent. Similarly, New York City has a win rate of 81 percent, while the next most populous county, Suffolk, a suburb outside of New York City, has a win rate of 43 percent. Albany, a less-populous county in upstate New York, has a win rate of 41 percent.

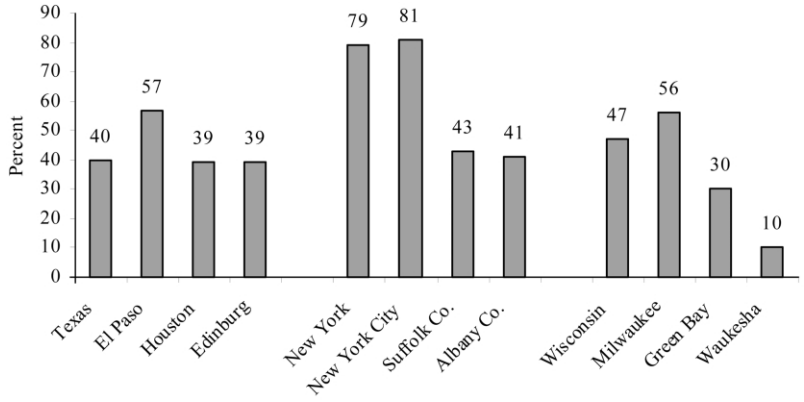

FIG. 3.—Client success rates at all hearings

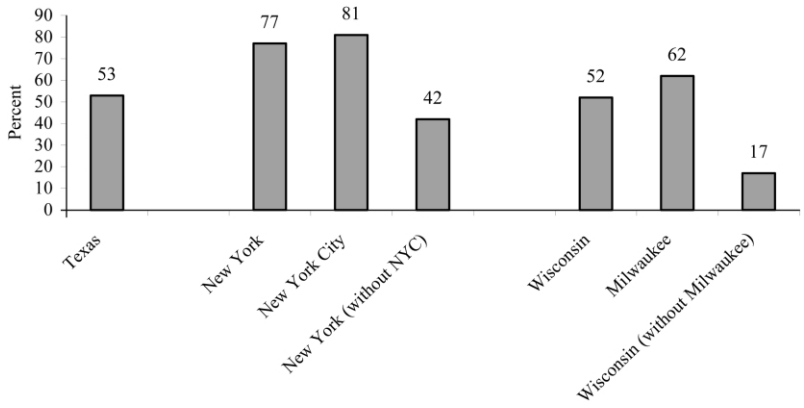

FIG. 4.—Client success rates at work hearings

In contrast, the Texas client success rate in the urban region of Houston, the state's largest city, is identical to that of Edinburg, its most rural area (39 percent). El Paso, the state's fifth largest city, has a success rate of 57 percent. Thus, in contrast to those in New York and Wisconsin, clients in the largest urban areas of Texas do not win more often than their rural counterparts.

For some clients, especially in New York, success often comes without a hearing on the merits; the request instead spurs the agency to withdraw its notice of adverse action. In New York City, 42 percent of client wins occur when the agency withdraws its notice. In New York counties outside the city, the percentage is even higher (63 percent). When the agency does not withdraw its notice and a hearing is held on the merits, New York clients outside the city win only 26 percent of the time (and 76 percent in New York City). In Wisconsin, only 7.9 percent of cases are resolved without a hearing on the merits. In Texas, less than 1 percent of cases are reported as settled. However, as noted above, no-shows and withdrawals are excluded from these calculations. Thus, the difference between New York, which settles cases by withdrawing its notice, and Texas, in particular, with few settlements, may result in part from administrative bookkeeping. Texas reports nearly double the number of client withdrawals (24 percent as compared with 13 percent for New York).

There were some differences in the outcomes of hearings. As noted above, much of the fair hearing system is devoted to resolving work issues. These issues often involve increased agency discretion and fewer rights for clients. Despite this, fair hearings reverse decisions. In Texas and Wisconsin, clients are more likely to win work rule hearings than other types of hearings (fig. 4). Clients in Texas succeed 53 percent of the time in work-related hearings but only 29 percent of the time in all

other hearings. In Wisconsin, the client win rate is 52 percent for work-related fact findings and 39 percent for all other hearings. In Wisconsin, the client win rate is 52 percent for work-related fact findings and 39 percent for all other hearings. Clients in New York were slightly less likely to win work-related hearings than other hearings but were still very successful at work-related hearings, winning 81 percent of the time in New York City and 42 percent in the rest of the state.

There are significant regional differences within states. In general, clients in examined urban areas are more likely to win work-related appeals than those elsewhere. Clients in Milwaukee win 62 percent of work-related appeals. Only 17 percent win in the rest of the state. In New York, clients in New York City win 81 percent of work-related hearings. Outside the city, clients win 42 percent. (Regional outcomes on work-related hearings are not available for Texas.)

Limitations

While this study tells us how often clients filed formal appeals and identifies the outcomes of those appeals, it relies on administrative data that allow only an incomplete picture of the complaint resolution processes. The data do not include the informal or alternative mechanisms often used to resolve disputes. Clients have several opportunities to resolve complaints this way and typically do so by speaking with their caseworkers. New York, for example, at the client's request, requires the city to conduct informal case conferences to resolve adverse action notices. However, unless a fair hearing is requested, clients do not continue to receive aid. Clients may also pursue other remedies instead of appeals. For example, they might simply reapply when benefits are denied for failure to provide documents. Thus, the low appeal rates in this study may, in part, reflect attempts to resolve disputes through alternative mechanisms rather than passivity or dispute avoidance by clients.

Appeal rates may also be higher among certain recipient subpopulations, such as those challenging certain budgeting errors and other types of denials. The available administrative data permit only a broad measure of appeal rates among the general population, and with the exception of work sanctions discussed below, those rates are based on all adverse notices sent. Adverse notices allow a crude measure of appeal rates because not all such adverse notices advise clients of an unfavorable action. A more refined analysis might reveal more complex patterns of appeals based on specific and clearly negative adverse actions.

Finally, while this study indicates how often clients have appealed and won in the years since welfare reform, the lack of more recent fair hearing data from the years before welfare reform leaves unanswered how welfare reform may affect appeal rates. The results do suggest that

clients are more willing to appeal work sanctions, which are more common since welfare reform.

Discussion

As the findings of this study demonstrate, fair hearings are an underutilized but potentially useful vehicle for challenging government's mistakes, including violations of work rules. Appeal and no-show rates are similar to those found in past studies from the 1960s and 1970s, when the vast majority of clients were hesitant to use the appeals system. Then, as now, New York City stands as an exception.

The two main empirical findings of this study, low appeal rates and high success rates, seem at odds. If clients have a chance of succeeding, why do they not appeal more often?

One answer might be that clients who appeal have the best cases; those with weaker cases either decide not to appeal or fail to show after requesting a hearing. Many clients do, in fact, request hearings and then fail to show. New York and Texas clients who request a hearing within 10 days can buy time as aid continues, regardless of the case's merit. Thus, low appeal rates may accompany high reversal rates, in part, because only clients with the strongest cases persist in their appeals.

However, it is questionable to assume that clients are not appealing because their cases lack merit. As Evelyn Brodkin (1986, 1997) demonstrates, bureaucratic disentitlement, or the denial of aid to otherwise eligible clients through a mixture of mistakes, errors, and intentional actions, often occurs in welfare bureaucracies (see also Fazzolari 1996). Recent research on sanctions under welfare reform indicates that they are often erroneously imposed (Bazelon and Watts 2000; U.S. General Accounting Office 2000; Khakoo 2001; Wisconsin Legislative Audit Bureau 2001). Wisconsin, in particular, has been singled out for a high rate of error in sanctioning. As this study demonstrates, the higher error rate coincides with low rates of sanction appeals.

To be sure, many, if not most, adverse notices are not sent in error. However, the high reversal rates across all three states in this study likely indicate a pattern of bureaucratic disentitlement. Notably, big cities like Milwaukee and New York City generate the highest reversals. This suggests that big cities may be especially plagued by bureaucratic mistakes. This observation does not hold true for Texas, where reversal rates in the largest cities are identical to those in more rural regions.

New York City's high error rate may partially explain its higher appeal rate. While bureaucratic disentitlement is a feature of many welfare bureaucracies, it is especially characteristic of New York City. In past years, legal action was required to stop the city's Human Resources Administration from engaging in churning, a process in which cases are

repeatedly and routinely closed for technical violations (Fazzolari 1996). The high reversal rate of 80 percent in 2002 may indicate that high rates of bureaucratic disentitlement still exist.[16]

It may also be the case that the adverse decisions made by low-level agency bureaucrats are not necessarily mistakes but discretionary decisions that benefit from the increased scrutiny of the hearing process. Welfare reform has made eligibility more complex. Clients must not only prove need, but that they are willing to work, as well. Caseworkers are now often involved in such subjective and discretionary tasks as deciding whether clients can work, helping them to do so, and sanctioning them when they do not comply with program requirements. Fair hearings may provide a forum in which the complexity of clients' behaviors can be fully assessed. Such a face-to-face personal encounter, far from the front lines, may result in a different decision.

New York City's climate of social activism may also explain its higher appeal rates. The city is home to numerous advocacy groups; some are even stationed within welfare centers. The city also has a rich tradition of advocating against the welfare bureaucracy. In the past, fair hearings were used as a mass organizing tool to highlight the system's inequities (Cloward and Piven 1999). The presence of advocacy groups may help create a climate in which challenging the welfare bureaucracy is encouraged. As Handler (1992) explains, such groups can provide crucial information, encouragement, and support, fostering the identification and collectivization of grievances.

The high rates in New York may represent a kind of tipping point. A high rate of error and, hence, high reversal rates at hearings couple with community encouragement to create the conditions for increased numbers of appeals. However, it is difficult to identify the point at which appealing becomes the rational, preferred, and normative response to a perceived agency error. For example, clients in Texas are more likely to win when challenging a work sanction, and while they are more likely to appeal sanctions than other types of adverse actions, only a few sanctioned clients appeal.

Clearly, additional factors inhibit appeals. While this study's quantitative findings cannot explain these factors, the existing literature on complaining behavior provides some clues. As William Felstiner, Richard Abel, and Austin Sarat (1981) explain, before a transgression turns into a dispute, the victim must label what has happened an injury to themselves (naming); believe it is someone else's, and not their own, fault (blaming); and assert a right to a remedy from the person who has wronged them (claiming). This ability to name, blame, and claim varies among people and settings.

As Handler (1986) suggests, poor people dealing with welfare programs are disadvantaged at all three steps. Identifying, or naming, a wrong in a welfare transaction requires knowing when often-complex

rules are being violated. Clients are often unaware of these rules or when a worker applies them incorrectly (Handler 2005).[17] Or, because denials are so routine in welfare bureaucracies, clients may view them as a fixed and expected event rather than as a wrong that can be challenged. As Dan Coates and Steven Penrod explain, to perceive something as an injury, it must be different from what is expected. That is to say, it must be "less than what [people] have gotten in the past, or less than similar, relevant others are getting" (Coates and Penrod 1981, 668).

Previous research of consumer complaint behavior lends support for this view. Studies find that those least likely to complain are the least well-off and most vulnerable consumers, including the elderly and those with low education and income levels (Warland, Herrmann, and Willits 1975; Moyer 1984). These trends in part reflect low expectation levels; the consumers are less likely than others to report dissatisfaction (Andreasen and Manning 1990; Lee and Soberon-Ferrer 1999).

Clients may also identify a wrong but blame themselves. Self blame may result from the psychological distress experienced by welfare clients (Goodban 1985; Ensminger 1995). It may also be reinforced by the degradation processes common in welfare agencies, as well as by stigmatizing and negative interactions with caseworkers (Miller 1983; Anderson, Halter, and Gryzlak 2004). The ongoing public debate over welfare reform, which targeted clients for behavioral change and eliminated the entitlement to welfare, may also promote self blame.

Filing, or claiming one's right to appeal, also requires a sense of power. Needing benefits, however, connotes a lack of power, which is reinforced by the greeting clients get at the agency door (Hasenfeld 1985). As Joe Soss (2002) finds in interviews of Aid to Families with Dependent Children (AFDC) clients, long waits, ugly physical environments, the visible presence of security, intrusive questioning, and controlling interviewing styles all communicate to clients their lack of power. Two-thirds of the clients Soss interviewed were unwilling to pursue grievances against the agency or the caseworker. He concludes that "people who claim AFDC benefits tend to come away from their first encounter with a strong sense that as clients, they will be expected to accept decisions and procedures without protest and will not be asked for very much input" (Soss 2002, 115). He also reports the perception among clients that "it is helpful for [them] to appear appreciative, respectful, and nonassertive in dealing with workers" (2002, 115). Under welfare reform, clients have an increased incentive not to upset these relationships (Diller 2000). Caseworkers make crucial determinations concerning work readiness, work assignments, and sanctions. Moreover, they control access to essential resources, such as child care and transportation, that clients need in order to work.

Clients may also perceive the appeal process as time consuming and

burdensome, with relief as too distant. Individual vulnerabilities and a preoccupation with immediate survival, coupled with bureaucratic obstacles, may create "application fatigue" (Cowan and Halliday 2003, 140). Clients may thus identify the wrong but feel too exhausted or overwhelmed to pursue an appeal.

Gender may also play a role. Welfare clients are primarily women, and women may differ from men in their approach to conflict, preferring more informal procedures that emphasize relationships rather than rights (Gilligan 1982). Researchers find that victims of sexual harassment (who are primarily women) often fail to file formal complaints against their employers (Gruber and Bjorn 1982; Jensen and Guteck 1982; Riger 1991; Fitzgerald, Swan, and Fischer 1995; Dansky and Kilpatrick 1996; Rabinowitz 1996). Women receiving welfare share certain important characteristics with women experiencing harassment on the job. Both lack power and are faced with the loss of their means of support. Given these factors, both may consider formal adversarial complaint procedures an inappropriate or ineffective way to resolve disputes.

The failure to appeal may also reflect a larger pattern of disengagement from public and civic life. Low-income people, and especially recipients of public assistance, are among the groups least engaged politically (Verba, Schlozman, and Brady 1995; Putnam 2000). As Soss (1999) explains, they often think that they have the least to gain from the political process. For many clients, the welfare office is indistinguishable from other parts of government (Soss 1999). Hence, public mechanisms (such as fair hearings) for challenging government's mistakes may be viewed as fruitless as other forms of political engagement.[18] This may be especially true if the state agency that hears the appeal is, to clients, virtually indistinguishable from the local agency that denied them benefits.

This dynamic may be altered somewhat in large urban welfare bureaucracies like those in New York City. Paradoxically, such bureaucracies may generate a more activist clientele than those found in rural counterparts. While complex, overly demanding, and oppressive bureaucracies tend to generate acquiescent clients, they can also do the opposite. Those clients who do succeed in getting what they want, even in part, may feel more efficacious, not less, because they have successfully negotiated the bureaucracy (Soss 1999). Soss finds this to be especially true in urban areas, where central city welfare clients in his study tested higher for internal political efficacy than clients elsewhere.

Another factor may be the informal processes that encourage complaining behavior and operate outside more organized channels. Soss (2002) finds that social networks can affect decisions related to the welfare bureaucracy. When family members, friends, neighbors, and community organizations all have knowledge about welfare benefits, it may normalize welfare receipt. Strong and stabilizing social networks

are often characteristic of the types of economically distressed urban neighborhoods in New York (Oliver 1988). Such networks may act as informal conduits of information and encouragement as network members who have appealed advise others to do so.

Conclusion and Future Areas of Study

Broad issues come into play when clients avail themselves of fair hearings. The fair hearing process affirms the rights of citizenship and acknowledges the citizen receiving welfare. As Soss (2002) explains, for the poor, the experience of citizenship is played out through the local welfare agency. Claiming welfare benefits is a political act that permits access to community resources necessary for survival. As the *Kelly* decision recognized over 30 years ago, without welfare and the ability to contest its arbitrary denial, the poor cannot fully participate in the life of the community because their basic needs are not being met. In the decades since *Kelly*, the status of the poor as full citizens has been repeatedly challenged (Munger 1998), and welfare's scaffolding has been at least partially dismantled. Fair hearings remain, however. Further research is needed to determine whether they are effective mechanisms for ensuring that citizens are able to access the benefits for which they are eligible.

Specifically, further research is needed to explain fully what in the formal hearing process motivates or inhibits clients. Of particular interest is the interaction between client successes at fair hearings and complaining behavior in public bureaucracies. While previous research on complaining behavior focuses primarily on the subtle interplay among socioeconomic status, powerlessness, and ignorance, appealing behavior may be based in part on more rational calculations. Clients may be emboldened, and their lack of power counteracted, when one part of government routinely corrects the mistakes of another part of government. Such perceptions of empowerment may also occur when social networks or community organizations encourage clients to appeal. Further study is also needed to determine what factors must be present in order to create a culture of complaint. So too, efforts should consider how neighborhood characteristics, social networks in particular locales (rural, urban, and suburban), and clients' race or ethnicity affect clients' interactions with the welfare fair hearing system.

It is also important to explore whether formal, adversarial fair hearings are appropriate at all. While the findings from New York City seem to suggest that fair hearing use can be increased, the reasons for the city's higher appeal rates may not be easily replicated elsewhere. As early commentators suggested after *Kelly*, and as discussed above, fair hearings may be a remedy ill suited to clients' circumstances and characteristics. The results of this study confirm that few clients use the fair hearing

system, but this research sheds little light on why they do not request, or often fail to attend, their own hearings.

Finally, the case of Wisconsin, the only state to privatize its fair hearing system, needs further investigation. This study reveals few differences in appeal rates between Texas and Wisconsin (both were low). So too, success rates in New York resemble those in Wisconsin (both were higher in urban areas). The only difference across these states is that clients in Wisconsin are substantially less likely to abandon their appeals than clients in Texas and New York. A more in-depth analysis of Wisconsin's hearing system is needed to determine what effect, if any, privatization has had on clients' willingness to exercise their appeal rights.

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Notes

1. The term "no-show" indicates a client who abandons his or her request for a hearing without providing formal notification of the intention to do so.
2. Because of the affirmative obligation to help the needy under Article XVII of New York's state constitution, when this time limit has been reached, clients can receive noncash assistance under the Safety Net program (New York Social Services Law, sec. 62).
3. As of September 2003, Texas began imposing full-family sanctions (Texas Human Resources Code, sec. 31.0032). The entire family's grant is eliminated. By contrast, a partial sanction eliminates the client's portion of the grant but does not touch the portion allocated to the client's dependents.
4. The term "withdrawals" indicates clients who formally withdraw their hearing request.
5. It is not possible to differentiate this group administratively from those who request a fair hearing in response to a notice.
6. The available administrative data do not provide an accurate way of separating notices by likelihood of appeal.
7. However, it is also possible that some clients may not appear at the hearing because they mistakenly assume that the continued aid means their grant has been reinstated.
8. In all three states, there could be various reasons for a withdrawal; the client might

decide that there was no basis for an appeal after speaking with a caseworker, or the matter might be resolved between the worker and client. No-shows might also indicate that the clients resolved the matter before the hearing. Because clients received aid pending their appeals in Texas and New York, a hearing request may have been made to prevent the termination of benefits temporarily.

9. Not all states recorded outcomes in all three categories. For example, New York used the category "agency withdrawal of notice," which indicates that the case was settled in the client's favor. In Wisconsin and Texas, the corresponding category was "settled." New York also had several subcategories. For example, "correct when made" indicates a favorable outcome for clients.

10. Several of New York's rural counties, such as Clinton and Cayuga, held too few hearings to provide useful data for this study. Although New York City consists of the counties of Manhattan, Bronx, Kings, Staten Island, and Queens, it was treated as one entity because it is governed as such. New York's other counties, by contrast, are distinct political entities.

11. This rate is calculated by dividing the number of hearings (4,667) by the number of notices (569,976). The notices are linked to 279,553 denials, 158,705 discontinuances, 62,055 reductions, and 69,663 sanctions.

12. The appeal rates for Milwaukee and the rest of the state are based on administrative records from Wisconsin's automated notice system. State records show that a total of 1,201,882 notices were sent to clients in 2002. In Milwaukee, 481,045 notices were sent, and 730,021 notices were sent in the rest of the state. The total number of hearing requests in Milwaukee was 565. There were 162 hearing requests in the rest of the state. Wisconsin sent the most notices and was the only state in which the appeal rate based on adverse notices was not higher than rates based on population. The lower appeal rate may reflect increased use of notices to communicate with clients, not a lesser desire to appeal.

13. According to administrative data, 236,568 notices were sent to clients outside New York City. These include 44,951 denial notices, 41,514 closing notices, and 154,359 undercare (reduction) notices. Outside the city, 8,446 hearings were requested. New York City's appeals rates are calculated two ways because of gaps and possible errors in the data. The first calculation (35 percent) is based on state data indicating that 230,211 adverse notices were sent by New York City, and 80,529 hearings resulted. The number of adverse notices was less than the number sent outside New York City (236,568), even though two-thirds of all recipients reside in New York City. This casts doubt on the number's accuracy. The researchers were unable to verify the number of adverse notices directly through the city agency (Human Resources Administration), which refused to disclose these data. Thus, a second appeal rate of 21 percent is calculated by extrapolating from the number of notices sent outside New York City. The projection is the number of notices the city likely sent. It is based on the proportion of recipients who reside there.

14. However, these requests also included other work-related challenges. For example, these include whether a client met state qualifications for job readiness. Such challenges could not be distinguished from those related to sanctions. Thus, the appeal rate for work sanctions only is probably slightly lower.

15. Another 9 percent of cases resulted in split decisions in Wisconsin. These cases were not included in the calculations.

16. A high reversal rate may also occur in an agency that is ill prepared to present its case at the hearing. This could result in a win for the client, even if mistakes were not made by the agency. On the other hand, an agency's failure to prepare for hearings may also be indicative of more systematic problems.

17. Clients whose grants have been reduced by a partial-work sanction, as was the case in all three states studied, may not even be aware that they have been sanctioned. In a recent study of work sanctions in California, Yeheskel Hasenfeld, Toorjo Ghose, and Kandyce Larson (2004) find that over half of sanction recipients in California were unaware that a sanction had been imposed.

18. Soss contends that this sense of futility is created, and not just reflected, in the welfare office. As Soss explains, welfare bureaucracies are "sites of adult political learning" (1999, 364) where clients learn they can do little to influence public policy or individual outcomes. He suggests that this knowledge is then transferred to the larger political arena.