
Confronting Government After Welfare Reform: Moralists, Reformers, and Narratives of (Ir)responsibility at Administrative Fair Hearings

Vicki Lens

Almost 40 years ago, the Supreme Court, in the landmark case *Goldberg v. Kelly* (1970), provided welfare participants with a potentially potent tool for challenging the government welfare bureaucracy by requiring pre-termination hearings before welfare benefits were discontinued or reduced. In 1996, with the passage of the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA), the rights talk of *Kelly* was officially replaced with the discourse of individual responsibility. Using observational data of administrative hearings and interviews with administrative law judges and appellants, this study explores how fair hearings have been affected by this official reconceptualization of rights. I find that hearings are not a panacea for challenging the more punitive aspects of welfare reform, but nor are they devoid of the possibility of justice. While hearings can replicate in style and substance the inequities, rigid adherence to rules, and moral judgments that characterize welfare relationships under the PRWORA, they can also be used as a mechanism for creating counternarratives to the dominant discourse about welfare. This study identifies two types of judges—moralist judges and reformer judges—and examines how their differing approaches determine which narrative emerges in the hearing room.

Almost 40 years ago, the Supreme Court, in the landmark case *Goldberg v. Kelly* (1970), provided welfare participants with a potentially potent tool for challenging the government welfare bureaucracy. By requiring pre-termination hearings before welfare benefits were discontinued or reduced, the Court gave recipients a more meaningful opportunity to be heard and to participate in the institutions of government. The Court also brought participants into the fold of citizenship, framing welfare as a right, not a privilege, and proclaiming that “welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community” (*Goldberg v. Kelly* 1970:265).

This study was supported by a grant from the Fahs-Beck Fund for Research and Experimentation. Special thanks to the Law & Society referees for their helpful comments. Please address correspondence to Vicki Lens, Columbia University School of Social Work, 1255 Amsterdam Avenue, New York, NY 10027; e-mail: vl2012@columbia.edu.

In 1996, with the passage of the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA), the rights talk of *Kelly* was officially replaced with the discourse of individual responsibility. Welfare was recast from a government obligation to a reciprocal obligation, to be dispensed only after the poor—through work—demonstrated their responsibility. In a highly symbolic and meaningful choice of words, the law also proclaims that the PRWORA “should not be interpreted to *entitle* any individual or family to assistance” (PRWORA 1996: 42 USC 601(b); emphasis added). The obligation remains, though, to provide recipients with an opportunity to be heard in a state administrative or appeals process when their benefits are reduced or denied (PRWORA 1996: 42 USC 602(a)(1)(B) (iii)).

Administrative hearings (commonly referred to as “fair hearings”) constitute a significant form of civil justice. As one example, there were more than 130,000 requests for welfare hearings in New York City in 2007, which is three times the number of small claims court cases filed there yearly (New York State Office of Temporary and Disability Assistance 2007:43; New York State Unified Court System 2009). For many citizens, hearings are their primary contact with legal systems. Because hearings are also welfare participants’ only recourse for challenging government when it denies them access to life-sustaining benefits, they are also “the primary social justice system for poor people in the United States” (Brodoff 2008:132).

Few studies have focused on fair hearings or the use of legal mechanisms to challenge the welfare system (see Sarat 1990; White 1990a). While several studies have investigated welfare participants’ interactions with state workers post-welfare reform (see for example Gilliom 2001; Soss 2002; Lurie 2006), with the exception of this author’s earlier study (Lens 2007, in press), none focus specifically on the fair hearing system. Of interest is how fair hearings have been affected by the official reconceptualization of welfare from a right to a selective benefit premised on conformance to specific social norms (Handler & Hasenfeld 2007; Adler 2008). Through interviews with 59 welfare participants in an urban and suburban area, I examined what motivates or inhibits them from appealing adverse government decisions. I extend this research, using ethnographic methods, including observational data of fair hearings and interviews with administrative law judges and appellants, to explore what happens when marginalized poor citizens meet face-to-face with government officials to dispute their decisions. This study also builds upon sociolegal scholarship that explores citizens’, including poor citizens’, experiences with lower-level justice systems, such as criminal district courts and small claims courts, in the United States (Conley & O’Barr 1990; Merry 1990; Yngvesson 1993).

I find that hearings are not a panacea for challenging the more punitive aspects of welfare reform, but nor are they devoid of the possibility of justice. I find that their use is more contingent and contextual, shaped as much by the various actors in the hearing room, and particularly the judge, as by the nature of the law and the types of disputes brought before them. I find that certain judges, whom I call moralist judges, act in ways similar to front-line workers, as moral agents enforcing the new normative order of work and responsibility. Other judges, whom I call reformer judges, play a more traditional judicial role of protecting individual rights against the power of the state by closely scrutinizing the agency's actions.

Theoretical and Historical Framework

Historically, citizens who received welfare, in contrast to other government benefits such as Social Security, were treated as less morally deserving. Aid to Dependent Children (the precursor to Aid to Families with Dependent Children and Temporary Assistance for Needy Families [TANF] under the PRWORA) was the least generous of the New Deal programs. A two-tier system was created where workers received social insurance benefits, and non-workers, primarily women, received means-tested, and through such devices as suitable home provisions, morality-tested, welfare benefits (Abramovitz 1996; Handler & Hasenfeld 2007). It was not until the 1960s, when a discourse of rights entered the public dialogue through the civil rights movement, that welfare, aided by its own welfare rights movement, was reconceptualized from an act of charity to a right of citizenship (Davis 1993; Kornbluh 2007). While advocates fell short of creating a substantive right to welfare, the Supreme Court's decision in *Kelly* recognizing welfare participants' right to procedural due process installed welfare within the ambit of rights (Bussiere 1997). The value of this right to participants was evident. As one example, in 1969, the year before *Kelly* was decided, in New York City only 1,300 welfare participants requested hearings; in 1989 more than 150,000 hearings were requested, even though the number of recipients had decreased (Perales 1990:891).

Fair hearings, though, occupy only some of the space within a rights discourse. How citizens are treated on the front lines of a government bureaucracy also implicates rights (Tyler 2006). Respectful treatment and the ability to tell one's story to an impartial decision maker are essential components of due process when citizens interact with government officials (Tyler 2006). The modern welfare bureaucracy is consistently criticized as missing these

ingredients on the front lines. Numerous studies document the harsh and unwelcoming nature of welfare bureaucracies (Brodkin 1986; Bane & Ellwood 1994; Meyers et al. 1998; Sandfort et al. 1999; Hasenfeld 2000; Gais et al. 2001; Soss 2002; Riccucci et al. 2004; Lurie 2006). As Gilliom (2001) describes, surveillance and control are the defining hallmarks of the front-line welfare relationship. As he elaborates, “[t]he participants are subject to forms and degrees of scrutiny matched only by the likes of patients, prisoners, and soldiers” (2001:28).

In a similar vein, Hasenfeld (2000) describes the work of welfare agencies as “moral work.” The primary goal is to ferret out the deserving from the undeserving. In contrast to the more respectful and personalized service provided to higher-status citizens in other government agencies, welfare offices employ harsh service technologies grounded in suspicion and distrust (Hasenfeld 2000; Soss 2002). Front-line workers, acting as “empowered citizen agents,” apply the law in the context of the moral and social assumptions underlying it, with workers reenacting these assumptions in individual cases (Maynard-Moody & Musheno 2003:24). Workers distinguish between good citizens and bad ones, dispensing benefits based on “mainstream notions of moral worth and productive membership in society” (Maynard-Moody & Musheno 2003:94).

Fair hearings occupy a precarious perch within this system. As the name itself signifies, *fair* hearings are the designated dispenser of due process within the system. They exist to correct the excesses, mistakes, and arbitrariness on the front lines. However, unlike other legal institutions designed to insure justice, such as small claims courts and district courts, they operate within the system whose actions they are judging. In nearly half of all states, the administrative law judges who preside over hearings are part of the state welfare bureaucracy (Brodoff 2008).¹ Thus, at many fair hearings government not only provides the legal forum, but is the opposing party as well.

Some contend that fair hearings are inherently flawed. White argues that hearings contribute to the “hyper legalization of welfare process” rather than unraveling it (1990b:868). Despite its grounding in moral judgments, welfare law is highly rule-bound and implemented through a web of rules and formulas that strip away the human drama of need (White 1990b). To succeed in the quasi-judicial forum of fair hearings, welfare participants must translate stark need into ill-fitting bureaucratic and legal categories. The stigma of welfare imposes additional disadvantages. It may prevent welfare participants from speaking with “confidence

¹ In the other half of states, a separate and independent panel of judges is used (Brodoff 2008).

and credibility” (White 1990a:37). Their relationship to the welfare bureaucracy is also ongoing; they may fear retaliation for what they say in the hearing room (Handler 1986; White 1990a; Soss 2002).

More generally, quasi-judicial proceedings may be ill-suited to welfare participants. Such groups are inherently disadvantaged when participating in procedures shaped by dominant groups, especially in the formalized setting of legal adjudications (Handler 1986; White 1990a). As Conley and O’Barr (1990, 2005) found in their study of small claims court, low-status social groups are less versed in legal talk and more likely to use what they label relational rather than rule-oriented accounts. Judges hearing a relational account must work harder; they must restructure the account to fit the linear logic of the law, and decide which facts are relevant, putting relational litigants at a disadvantage (Conley & O’Barr 1990).

Low-status groups such as welfare participants are especially susceptible to a form of moralizing that occurs when the powerless confront the powerful, and which undercuts their status as rights-bearing citizens. As Yngvesson (1993) found in her study of lower district courts where mostly poor people brought their complaints against neighbors and others, the clerks who served as gatekeepers reframed poor citizens’ complaints from a right to a moral tale, thus “reproduce[ing] the dynamics of power from which complaints emerge in the first place” (1993:57). Conley and O’Barr (1990) uncovered the same phenomenon in their study of small claims court, finding certain judges prone to making extra legal and critical personal comments to poor litigants.

Nonetheless, legal forums are used, even by the marginalized and disenfranchised, to create counternarratives, including a reconceptualization of rights. As Yngvesson (1993) also finds, while official actors often replicate asymmetries of power by dismissing or trivializing complaints, marginalized and excluded citizens use the lower district courts creatively to subvert embedded hierarchies of power, thus “negotiating and redefining normative order” (1993:8). White’s (1990a) recounting of “Mrs. G’s” fair hearing experience also demonstrates that resistance and confrontation is possible. While the account emphasizes Mrs. G’s disadvantages in the hearing room, it also illustrates the redemptive potential of hearings. As White describes, Mrs. G. ignores her attorney’s advice and pleads at her fair hearing for life’s necessities (a pair of Sunday shoes) she was not entitled to under the law. White observes, “[h]er statement was a demand for meaningful participation in the political conversations in which her needs are contested and defined” (1990a:49). Sarat (1990) notes similar moments of resistance among the welfare recipients he observed accessing legal services.

In short, resistance and subordination often exist side by side, with the latter fertilizing the former.

How much fertilization has occurred since welfare reform, and in particular within the fair hearing room, is unknown. As Munger (1998) explains, “[p]overty law carries powerful messages about the identities of the poor and the non poor, about responsibilities for poverty, and whether the poor are to be treated with the same respect as the nonpoor, as dependent persons, or as objects of discipline” (1998:936). The PRWORA represents a shift in the public’s conception of rights. Starting with the Social Security Act (1935), through *Kelly*, and lasting until welfare reform, the state was considered legally obligated to help the poor. This obligation, though, was never elevated to the status of a constitutional right. Nor despite attempts, most notably in the case of *Dandridge v. Williams* (1970), was poverty labeled a suspect classification, which would have provided the poor with enhanced protection under the equal protection clause.²

Instead, as the face of welfare began to change in the 1960s, from the white widows of the past to increasingly minority families and children born out of wedlock, welfare became less generous and more demanding (Abramovitz 1996). As women’s participation in the market economy increased (Blank & Schmidt 2001), the work behaviors of poor mothers also came under increased scrutiny. Work requirements became steadily more onerous, and states were encouraged under a federal waiver program to use more coercive approaches including mandatory work, time limits, and full-family sanctions to control the work behavior of the poor (Bane & Ellwood 1994).

The PRWORA represents the culmination of these changes and is reflective of a neoliberalism discourse that emphasizes free and private markets and “personal rather than public responsibility for well being” (Smith 2005:216). Both Democrats and Republicans joined together to eliminate the entitlement status of welfare, giving official sanction to the proposition that the state has few obligations toward its poor citizens. While the state still will provide assistance, it is now the poor, and not the state, who are legally obligated to behave in certain ways before being granted life-sustaining benefits, and even those benefits are temporary. Punishments and conformance with work and other behavioral norms, rather than aiding the most vulnerable, are the defining motifs of

² *Dandridge v. Williams* (1970) involved a challenge to a state law that imposed a cap on the amount of welfare assistance that a family could receive, thus treating large families differently than smaller families who received increased aid when additional children were born. The Court declined to treat poor families as a suspect classification, which would have subjected state laws to the highest standard of review under the Equal Protection Clause of the Constitution.

the PRWORA (Little 1999; Handler & Hasenfeld 2007; Seccombe 2007).

How these differing conceptions of rights are manifesting in the hearing room, a forum designed for the exercise of individual citizen's rights, is unknown. I examine this interplay between state obligations and individual rights and responsibilities through the disputes brought to the hearing room. I focus on cases, which I call "eligibility cases," where appellants have allegedly not provided sufficient documentation to prove their eligibility, or have violated a condition of eligibility, such as compliance with work rules. These cases involve discretionary and subjective judgments regarding eligibility for public assistance. They invoke narratives of fault and responsibility; were the appellants acting irresponsibly when not providing documents or failing to attend a work appointment? Or was the agency acting improperly by failing to provide needy citizens with aid?

Methodology

This study uses ethnographic methods, including observations of administrative hearings, informal and formal interviews with administrative law judges, interviews with appellants, and a review of the laws and regulations governing hearings. The observations were conducted in a suburban county located outside a major city in the Northeast during 2007 and 2008. The county is the most populous county in the state, outside of this city, and has the fourth largest population of welfare recipients in the state.³

I conducted all the hearing observations and observed all the judges (seven) who were assigned to the unit at the time. During the hearings I maintained a detailed log, recording both what was said (as much as I was able to as I listened to the case) and other observations as follows: physical descriptions of the parties and the environment of the room; obvious states of emotions (e.g., anger, crying, laughter); the parties' demeanor, tone, and style (e.g., authoritarian, conciliatory, antagonistic); level of formality (e.g., how strictly or loosely procedural rules on evidence and testimony were followed); and quality of personal interactions (e.g., friendly, hostile, apathetic). I also recorded routine and standardized data for each hearing observation (e.g., parties present, issue at hearing, length of hearing).

I did not use any formal selection process when deciding which cases to hear. On those days when there was a single calendar, I

³ To protect the anonymity of the judges and the hearing unit, all references that would allow the reader to identify the state have not been included, but they are on file with the author.

observed cases in the order in which they were heard. On those days when there were two calendars, and hence two judges hearing cases, I chose hearings based on which appellant appeared first and was ready to proceed. I also observed hearings during two different times of the year, summer and winter. I observed 70 cases in total; of these 53 were full cases on the merits, and the rest were adjournments or withdrawals. The shortest case took 10 minutes to complete, the longest two hours. The average time was 30 minutes.

In between hearings I talked informally with the judges and to a lesser extent the agency representatives. I was unable to take notes during these informal conversations but wrote notes afterward while still in the field and during gaps in observations. I transferred field jottings and observations into full field notes immediately after actual observations and used in-process memos to “identify and develop analytical themes” (Emerson et al. 1995: 100).

I also conducted formal in-depth interviews with six of the seven judges whose cases I observed, using a semi-structured interview guide consisting of open-ended questions about their approach to conducting hearings, their perception of participants and the hearing process, and their decisionmaking process.⁴ I also asked several general questions about their attitude toward the welfare system and the role of government in this sphere. The interviews lasted between one and two-and-a-half hours. Since I was not granted permission to tape-record these interviews, I took notes only. To insure the accuracy of my notes, I sent each judge my composed notes and requested that they check them for accuracy. All six judges responded to this request and provided me with corrections and edits of my notes of our interview.

A small number of appellants were also interviewed by telephone after their hearings. I had originally intended to interview as many appellants as possible. I collected the names and phone numbers of 33 appellants; of these nine were interviewed. As is common in this population of primarily low-income individuals, phone numbers were often disconnected and/or phone calls were not returned. Although the sample size is small, it is representative of the range of cases observed and includes at least one case from five out of the seven judges observed. While I did not choose the appellants randomly, I used no systematic bias to select them. I used these interviews as supplementary data to my primary data source, the observation of hearings.

A research assistant conducted the interviews using a semi-structured interview guide consisting of open-ended questions

⁴ The one judge I did not interview was assigned only sporadically to the fair hearing unit and lived too far away for a personal interview.

about the interviewees' reason for appealing and their experience at their hearing, including their perceptions of the judge and agency representative, how they were treated, and their perceived ability to present their case. They were also asked several general questions about their attitudes toward the welfare system and the role of government in this sphere. The interviews lasted from one half-hour to one hour and were tape-recorded and transcribed.

My unit of analysis is the case, or the hearing that I observed. The focus is on the conversations and interactions that took place in the hearing room, and not the outcome of the hearing (i.e., who won or lost), or the soundness of the appellant's or agency's legal position. Rather, I focus on how the appellant's case was presented, discussed and shaped by the parties through the course of the hearing. I use my informal conversations with the judges (which were sometimes but not always about the individual cases I observed), and the subsequent interviews with the appellants, to confirm my observations and to further explore the parties' perceptions and experiences of the hearing process.

I used grounded theory conventions for data analysis and began by conducting line-by-line coding, attaching descriptive codes to lines of data (Charmaz 2006). Next I conducted focused coding, which involved identifying the most significant and/or frequent line-by-line codes and choosing codes that best categorized the salient dimensions of the emerging themes and patterns (Charmaz 2006). Coding was an iterative process, and I returned to earlier coded transcripts or field notes to confirm, refute, or modify codes as they developed. I used analytical memos throughout the process, first to define and describe various codes and then to conduct theoretical coding, which is a way of rebuilding coded data and establishing a conceptual framework by exploring the relationships between categories and subcategories (Charmaz 2006).

To develop my categories of reformer judges and moralist judges, I used, among others, the following codes: moral worth, whenever the judge made a statement or suggestion that implicitly or explicitly referred to issues of moral worth; scrutinizing, when a judge challenged the agency's version of events; and joining, which encompassed the various and shifting alliances among the parties during hearings.

Findings

Fair hearings in this state sit atop a multilayered welfare bureaucracy. Local counties administer welfare benefits, determining eligibility and dispensing aid. The state department of social services supervises the provision of aid through the issuance of

regulations and administrative directives that interpret and explain social service laws. Unless and until a recipient appeals a county decision to deny, terminate, or reduce aid the state has no jurisdiction over individual cases. Hearings are conducted by the state, and the office of hearings and appeals is located within the state welfare bureaucracy.

The needs-based benefit determinations that can be appealed include financial aid and services (such as TANF), medical assistance (including Medicaid and state health insurance programs), and food stamps. Of the 70 cases I observed, 37 involved financial assistance, 28 involved medical assistance, and three involved food stamps.⁵ Because of the variety of programs, including state health insurance programs with higher income caps than TANF, appellants ranged from the very poor, including long-term recipients of public assistance, to others with steady employment whose only need was for health benefits or support services, such as day care. However, even these distinctions are fluid, as crises such as divorce, ill health, and unemployment cause formerly middle-class persons to apply for TANF. Almost two-thirds of the appellants were female; specifically, there were 23 male appellants and 41 female appellants. Twenty-three of the appellants were black, 10 were Latino, and 29 were white.⁶

For many appellants, appealing serves both instrumental and expressive purposes (Lens 2007, in press). It provides a chance for individual redress as well as a platform for protesting perceived unfair treatment. Appellants, in contrast to non-appealers who are often as equally frustrated with the system, have more faith in the system and their ability to engage with it. In short, “they chose agitation over apathy” (Lens in press: n.p.). However, like their non-appealing counterparts, they are suspicious of the state welfare bureaucracy’s ability to provide a fair and impartial forum. As described next, the physical location of hearings within the welfare center and the lack of judicial trappings contribute to this wariness.

The Place and Space of Hearings

Hearings within the county are centralized and are held in one of the local county welfare centers. Three people typically attend hearings. There is the appellant (and sometimes, but rarely, his or her attorney), who triggers the process by appealing an agency

⁵ The numbers do not sum to 70, the number of cases heard, because in two of the adjudged cases the program was not indicated.

⁶ Numbers do not sum to 70 because in some cases the appellants did not appear on their behalf and/or their sex or ethnicity could not be determined from the record.

decision to deny, terminate, or reduce aid.⁷ There is the decision maker, an administrative law judge appointed by the state welfare bureaucracy to hear the dispute, make findings of fact and law, and recommend a decision to the commissioner of the state social service department. The judges are all lawyers, but their backgrounds are diverse. Some are long-time state government employees; others have worked in legal services or district attorney offices. The agency is represented by county workers specially designated as fair hearing representatives and who only handle appeals. They are not attorneys; most have previously worked as caseworkers in the county welfare office.

In the legal world, appeals usually signify a higher authority, both literally and figuratively. For example, one talks of the court “below.” Courts look and feel different than other business and social spaces. Entrances and reception areas, and the courtroom itself, often possess a certain grandeur. The trappings of justice—the elevated bench and black-robed judges—symbolize power and status, but also the singularity of the law and the unique way in which participants interact in such a space (Stimson 1986).

There is little inkling of this at fair hearings. In the county welfare building where hearings are held, appellants sit in the lobby alongside other welfare participants conducting their everyday business. There is little to distinguish why they are there. They could just as easily be filing an application for assistance as to be appealing its denial.

Similar to judicial calendars, all appellants are given one of two times—9:00 or 1:00—for their hearings. The wait is unpredictable and, depending on how long each hearing takes, can be short or very long. In a courtroom this ordering of time serves both instrumental and expressive purposes. While inefficient for those waiting, it is very efficient for the court and signals its elevated and special status. But a ritual that elsewhere might signal the uniqueness of what is to occur here invites the opposite conclusion. The wait is no different than any other day at the welfare center where participants are not given specific appointments but queue up for assistance.

The architecture of the hearing room further downplays the significance of what is to come. The hearing rooms are located in the back of a large space, divided into cubicles, where the daily business of the welfare center takes place. Appellants must pass by

⁷ Of the 70 cases I observed, 11 involved an attorney, and in three the appellant was accompanied by a nonlegal advocate, such as a social worker. Appellants are rarely represented by an attorney because of the lack of legal services available for welfare recipients (Brohoff 2008).

these cubicles to get to the hearing rooms, which, unlike the cubicles, are enclosed rooms. As one appellant succinctly described it, "They took me into a back room," aptly if unintentionally distinguishing it from traditional courtrooms, which are at the center of activities.

The hearing rooms are ordinary and have few of the trappings of a courtroom. There is a desk at the head of the room where the judge sits, with a computer and phone on the desk. A table extends from the front of the desk, with chairs on each side. The table, chairs, and desk are ordinary mass-produced government furniture. The only embellishments, requested by the judges to give the room a more judicial aura, are two flags on a stand, the state flag and the flag of the United States. The room has none of the grandeur or solemnity of a courtroom. There is no sign of the somberness or dignity usually associated with the law and judicial spaces. The feeling is bland and ephemeral; any type of office work can occur in this room. Children, seldom seen in a courtroom, are often present.

The only nod to the power and authority of the respective players is the layout, with the judge sitting at the head of the desk while agency representatives and appellants sit across from one another, as is fitting for adversaries. The judges are not robed but wear business clothes; some wear suits, while others wear less formal, business casual clothes. The agency representatives also vary in their attire; some dress up and others dress down. Appellants dress the most informally; they usually come attired in street clothes, pants and sweatshirts or T-shirts, windbreakers left on, caps affixed. This lack of a *de facto* dress code is emblematic of the hearing room's informality. Appellants do not dress up for their hearings and enter an official space that does not suggest they should. No matter their garb they do not appear out of place.

The space between the parties around the table is close enough for ordinary conversation. It is a social distance where speech can be informal and nonverbal expressions easily discernible. No one needs to stand and approach the judge as in a courtroom, where the distance between the parties requires more formal language and body stance and more exaggerated gestures (Stimson 1986). While this informality may be less intimidating for appellants, along with the bland furniture and lack of judicial symbols and artifacts, it dilutes the expectation that a different type of decision-making is occurring.

As Stimson (1986) observes, architecture "embodies and imposes a sense of social order and social structure, and both encourages and limits social relationships" (1986:652). From the physical space it inhabits, to the way in which the parties dress and initially interact, the hearing room replicates the social order and

social structure of the local welfare office. There is little difference between the hearing room and the government offices where the initial transaction, now a subject of appeal, took place. Consequently, some appellants are unsure of where they are. They do not understand that the judge is from the state, that the state is different from the county, and that the judge and agency representative are not on the same side. It is left to the judge, sitting at an ordinary desk in a room located within the welfare center, to create the aura of a different and judicial space.

Narratives of (Ir)responsibility

Eligibility cases involve two separate categories of cases. The first involve alleged violations of the work rules, where the agency reduced or denied aid because the appellant allegedly failed to attend a work appointment, a requirement of eligibility.⁸ The second type of case, which I call document cases, involves the documenting of eligibility, with the agency denying or discontinuing aid because the appellant allegedly failed to submit required paperwork, attend a recertification appointment, or otherwise prove eligibility. Both these types of eligibility cases often involve complex findings of fact, credibility determinations, and subjective assessments.

The predominant narrative clash—common to all dispute narratives—is who is at fault. Welfare law, as described above, gives ample room for focusing scrutiny on appellants' actions and behaviors. Underlying many of the rules, and especially the work rules, are assumptions about the participant's lack of responsibility and ability to conform to social norms. On the other hand, welfare bureaucracies also elicit suspicion, as do bureaucracies in general, as they are prone to red tape and mistakes. Designed as adversarial proceedings, hearings potentially provide a place for these competing narratives to be examined equally.

I find that which narrative emerges is largely determined by the judge, and that two types of judges emerge: moralist judges and reformer judges. Moralist judges inject a sense of disapprobation and personal judgment in their hearings through both the

⁸ In accordance with federal and state law, recipients of public assistance in the subject county are required to engage in such work activities as attending assessment appointments, searching for a job, or working in subsidized or unsubsidized employment or work experience programs. Failure to comply with the work rules results in the imposition of a sanction, which is a pro rata reduction of the violator's portion of the grant. Hearings on work sanctions typically involve subjective determinations as to whether an appellant is too disabled to comply with the work rules or had "good cause" for not attending a work appointment, for example because of illness or a family emergency. Eighteen of the 70 cases I observed involved work sanctions.

questions they ask and the framing of issues. They are more apt to elicit and emphasize narratives of personal irresponsibility from the appellants. They focus on the wrongness and rightness of the appellant's actions, rather than the agency's. By contrast, reformer judges avoid, at least explicitly, the moral undertones of welfare reform, focusing on the facts rather than on personal and moral judgments. They take a more skeptical approach, scrutinizing the agency's actions closely. I examine these shifting narratives through first the work sanction cases and then the document cases.

The Work Sanction Cases

Work sanction disputes elicit a powerful and enduring social narrative, that of the irresponsible and personally defective welfare recipient. This narrative draws on larger societal assumptions about the participants, who are among the most stereotyped and stigmatized of social groups. According to this narrative many if not most welfare recipients, many of whom are single mothers and minorities, are incompetent and incapable in the spheres of work and family and must be prodded into self-sufficiency (Mead 1997; Rector & Youseff 1999).

Work sanction hearings are thus the most susceptible to the moral judgments about the poor's work and personal behaviors embodied in PRWORA. In one illustrative case, a young woman who was sanctioned claimed a fire in her apartment prevented her from working. The judge commented on the woman's use of agency-issued transportation tokens for work appointments to move her belongings to her father's house. She told her, "You used the tokens for personal things. It was obviously not important for you to go to [the Department of Labor]." A woman who missed a work appointment was told by the judge, "You have to toe the line." Another man, also appealing a work sanction and who claimed he left his worksite because "he was bleeding from his rectum" was told by the judge, "People with medical problems work. It doesn't make them abandon their work."

As the last case demonstrates, work sanction hearings also serve as a venue for contesting competing definitions of able-bodied. In the past, the disabled were viewed as more morally deserving of government help than the nondisabled. Under welfare reform, disability and deservingness are not synonymous, and many of the disabled are expected to work. Those claiming illness or disease or other work obstacles are often viewed as being able to work, but evading it. Failing to overcome obstacles presented by ill health or disease is sometimes portrayed as a moral failing.

An illustrative case involves a 43-year-old black woman, living in an emergency shelter and suffering from both shingles and

AIDS, who was sanctioned for failing to attend an appointment at the Department of Labor. At the hearing, she claimed that the morning of her appointment she awoke feeling ill but walked to the local church to use their phone to find out which bus to take to her appointment. According to her, the available bus took much longer than expected and that when she called the Department of Labor to say she would be 20 minutes late for her appointment she was told it was too late and was sanctioned. At the hearing the agency criticized her for calling for bus information at 10:00 for a 1:30 appointment because “it’s very easy she might not make it.” The agency told her, “You set yourself up, you know you’re ill, but [there are] times when [you’re feeling] good, times when [you’re feeling] bad. If [it was] so bad you should have rescheduled the appointment rather than setting yourself up.”

Work sanction cases can also revolve around narratives of agency irresponsibility. For example, appellants may allege that the agency made an error in processing the sanction or made it difficult for them to comply with the work rules. In one example involving a 37-year-old black man who failed to attend a drug assessment appointment, the judge focused on the agency’s failure to provide him with sufficient tokens to get back and forth to the appointment.

Which narrative dominates largely depends on the judge. I next explore in detail, through two contrasting cases, how the two types of judges, moralist and reformers, elicit dissimilar narratives. The first case, “Everyone Works,” involves a moralist judge, and the second, “Already Working,” involves a reformer judge.

Case #1: Everyone Works

This case involved a 42-year-old white man who was challenging the agency’s determination that he was employable and had to comply with the work rules. The agency went first, testifying that he was assessed and had various ailments, including Graves’ disease and psychiatric and drug problems, but that his doctors indicated he could work. They relied on, among other things, a physician-completed standardized employability form that typically provides minimal medical information and uses check-offs to indicate the appellant’s ability to stand, walk, and so forth. This form indicated that the appellant could walk or stand for one to two hours a day and that he could work part-time with limitations.

The appellant came to the hearing with additional information, including more detailed medical reports, and claimed that the cumulative effect of his ailments prevented him from working. According to him, his Graves’ disease was not under control and was being treated with iodine. He also explained that he had hepatitis but could not be treated for it until the Graves’ disease was under

control. He also had “stroke-level high blood pressure” and suffered from depression, which had also not been treated yet. He noted that in the past the agency found him unemployable and that his medical condition had not changed but had worsened. He also referred to a head injury, explaining that “his head was split open” and that he had problems with memory. In short, he constructed a story of disability.⁹

In response to the additional medical evidence, the judge said, “It’s not relevant, what’s relevant is whether or not you could work.” The agency echoed the judge: “It’s not relevant, people with diseases work.” The judge then mirrored the agency: “The issue is employability, not what disease you have.” Both the agency and the judge rejected the medical evaluation submitted by the appellant, preferring to rely on the standardized form. The judge explained, “I’m not a doctor, I can’t make a diagnosis.” The agency likewise explained, “I am not a medical doctor, neither is the Commissioner. That is why we give you forms to give to the doctors.”

They argued over the form, which said he could only walk or stand one to two hours at a time; the judge interpreted this to mean he could work: “Many jobs are mostly sitting.” The appellant argued that it meant he was severely limited. The judge told him, “Public assistance is not for people who can’t work”; the agency told him that “people with wheelchairs work.”

The judge distilled the sum of the appellant’s many medical ailments to the short, succinct, and bureaucratically approved employability form. Evidence that amplified or explained it was filtered out by the judge or agency, who “are not doctors” and “don’t make diagnoses.” This rigid application of the rules—where the only relevant evidence was the form—contrasted sharply with the judge’s and agency’s wide-ranging and negative personal judgments of the appellant’s willingness to work. Here they universalized their arguments and strayed outside the law, arguing that everyone works—even people with wheelchairs work. Judge and agency joined together to advance their common narrative. The judge restated the agency’s argument, and vice versa. The agency spoke for the judge: “I am not a medical doctor. Neither is the Commissioner,” thus emphasizing their commonality.

Case #2: Already Working

This case, presided over by a reformer judge, involved a work sanction for failing to attend an assessment appointment. The

⁹ Under the Supplemental Security Income program (SSI), individuals who are disabled may be entitled to benefits; however, this is a separate and distinct program not at issue here.

agency presented its case, stating that the appellant, a 25-year-old Latina woman, told the agency she was working the overnight shift at Pathmark (a supermarket) the day of her assessment. The agency contacted Pathmark and was told the appellant had quit without notice several weeks before. The agency argued that even if she was working at Pathmark she still could have attended her appointment that day. The agency depicted the appellant as untruthful, claiming she was working when she was not, and that in any event she had no excuse for not attending her appointment.

As soon as the agency stopped speaking, the appellant said, “I don’t understand the documents. I got the gist of it . . . [but not all of it].” The judge responded by telling her, “I want you to understand all of it.” He restated the agency’s case and then walked her through all the documents the agency submitted. He also extracted from the agency’s file additional evidence favorable to the appellant but not mentioned by the agency, indicating that she was working at Pathmark, including overnight shifts, and had submitted pay stubs to the agency.

The judge then elicited the appellant’s side of the story, asking her, “Did you go to your assessment?” After she submitted a document from Pathmark indicating that she had worked the night shift the day of her appointment, the judge noted to the agency that the appellant’s proof “flew in the face” of the agency’s assertion that she quit Pathmark without notice. The agency then pursued another tack, first asking the appellant when she obtained the evidence from Pathmark and then asking her when Pathmark posted work schedules. (The latter question was meant to suggest that the appellant made the assessment appointment even though she knew she was working.) The judge asked the agency, “Now is that relevant?” and blocked this line of questioning. The hearing was adjourned so that the agency could consider settling the case in the appellant’s favor.

The judge used several devices to level the playing field and direct the narrative arc of the hearing. He monitored the appellant’s level of understanding, restating the agency’s presentation not as fact but to make it more understandable and allow her to respond. After the agency presented its case he asked the appellant, “Did you go to your assessment?” rather than “Why didn’t you go to your assessment?” thus giving her a clean slate to tell her story without assuming malfeasance. Instead of presenting a united front with the agency as the judge did in “Everyone Works,” he signaled his distance, first by scrutinizing the agency’s proof and then by openly disagreeing with the agency. Finally, there was no hint of disapproval of the appellant’s character or work habits, only a focus on the facts.

The Document Cases

One of the most enduring narratives about government bureaucracies is that of dysfunction, encapsulated in the words or phrases typically used to describe them: “mired in red tape,” “Byzantine,” or “Kafkaesque.” Welfare bureaucracies in particular have been criticized as prone to bureaucratic disentanglement, or the denial of aid to otherwise eligible people based on processing errors (Lipsky 1984; Brodtkin 1986). Consistent with this, cases involving the documentation of eligibility elicit numerous complaints from appellants, including that the agency fails to return phone calls, loses their documents, or otherwise makes mistakes. The agency’s position is the mirror opposite; it typically claims the appellant is neglectful and uncooperative.

Even these seemingly straightforward paper-processing cases can elicit, similar to the work sanction cases, morally tinged narratives on both sides. Appellants sometimes use hearings to complain not just about the benefit denied, but also how they are treated by front-line workers. An example is a woman applying for welfare for the first time at age 50 who began with a prepared statement detailing how poorly she was treated by workers: “What I didn’t get is being treated like a human being . . . I requested this hearing because of the way my claim was handled . . . I was treated unprofessionally and disrespectfully . . . like a number.” The agency, for its part, often depicts appellants as irresponsible and unable to follow through on straightforward requests for documents.

As with the work sanction cases, and illustrated next by “The Missing Documents” case, moralist judges focus on the appellant’s shortcomings. By contrast, in the “Lost Day Care Payments” described afterward, reformer judges are more apt to challenge the agency.

Case 3: The Missing Documents

This case involves a 45-year-old white mentally impaired woman who had been receiving Medicaid for many years. She requested a hearing when her Medicaid was discontinued for failure to provide certain documents. The hearing was presided over by the “Everyone Works” judge. The appellant was accompanied by a social worker from a local agency that assists severely mentally disabled individuals. The agency presented its case, explaining that the appellant was discontinued because she failed to submit requested documents regarding her income and where she was living. The agency noted that a one-week extension was given when the appellant called for an extension to submit the documents. When the documents were not received, the worker sent the appellant a standard letter required by the regulations requesting

them again and offering assistance if she was having trouble securing the documents. The letter was returned as undeliverable. The agency's narrative thus depicted the agency as reaching out to assist an uncooperative client who was given several chances to comply.

In response to the agency's presentation, the appellant explained that she moved and that her former landlord was not forwarding her mail. The judge responded by telling her "it was not a question of mail" and that she had "numerous opportunities to get the documents." The judge then asked her, "Why did you ignore the agency?" The appellant explained that she fell and that she had a death in the family, and had requested additional time, but the worker denied it, telling her, "We don't care if you had a death." She thus constructed herself as a victim beset by problems and the agency as unhelpful and uncaring.

The judge did not ask the appellant any follow-up questions about the death or her accident, or her conversations with the agency. Nor did she ask the agency about these events. Rather, she asked the appellant, "What did you do? You had a responsibility. You decided to do nothing." The judge's focus on the appellant's failings silenced her, and the appellant said, "I don't have much to say." She resorted to pleading need, stating, "I have no money." The judge concluded the hearing by saying, "What do you want? What are you fighting? You come here with no documents. The agency has a right to ask you for documents. It's not your place not to decide [to give it to them]. Why would you want a fair hearing?" The appellant briefly and hesitantly tried to place the focus back on the agency: "I have had Medicaid for a long time, they know I need it." The judge suggested she withdraw her fair hearing request and reapply, noting, "The agency did not do anything wrong . . . [you] made a willful decision not to bring documents and still don't have it."

The appellant, whose timidity increased as the hearing progresses, only hinted at possible agency malfeasance (they don't care if you had a death; they know I need [Medicaid]). Despite the presence of a social worker for the disabled (who sat silently after identifying herself), the appellant's mental impairment was not part of the narrative, even though it was known to all. The judge also framed the agency's demands in legal terms—they had a "right" to the documents—while judging the appellant in personal terms. This impeded scrutiny of the agency's actions. There was little distinction between the judge and the agency representative; both blame the appellant.

Case 4: The Lost Day Care Payments

This case, presided over by the reformer judge in "Already Working," involved a discontinuance of day care payments, also for

failure to submit required documents. As the hearing began, the appellant, a young white woman in her thirties, immediately seized control, stating succinctly and forcefully, “Here’s the deal. I am missing two months’ day care.” Without being interrupted by the judge, she gave a detailed account of the agency’s mistakes, including a lack of notice of the termination of day care. She also included legally irrelevant but personally compelling details about her life, including that she was the sole breadwinner in her family because her husband had a disabling brain tumor. She ended her presentation with a clear and strong statement of the remedy she was seeking: \$2,000 reimbursement for the day care bill paid with her credit card and approval of her day care going forward, although the latter issue was not before the judge.

After she presented her case the judge, adopting the narrative of agency dysfunction, asked the agency if it had any record of why it did not produce a notice. He suggested an adjournment so that the agency could resolve the matter (in the appellant’s favor). The appellant, concerned that an adjournment would delay a resolution, repeated her presentation. After embellishing on her husband’s disability, she noted that for nine years she received notices from the agency and that this time she did not. The agency interjected that it “hadn’t presented their case yet.” The appellant and judge ignored this statement. The appellant explained that she “can’t wait any longer. I waited six weeks for this hearing.” She also admitted, “Life is a bit chaotic. My husband can misplace the mail [due to his brain tumor].” She pled hardship, explaining that without day care she would have to take her 10-year-old son, who suffered from attention-deficit disorder, to work with her.

The appellant combined her narrative of agency dysfunction with a compelling narrative of vulnerability and need. Her slight admission of fault—that her life was “chaotic” and the mail may have been misplaced—was drowned out by the dramatic circumstances surrounding it: a husband with a brain tumor who could not support the family, a son with problems. The judge responded by telling the agency, “At this point she has made a compelling case.” He also told the agency, “Not that I dispute your word. But this young lady needs proof from the agency” (that her day care had been approved). The agency left the room to secure the proof (in the form of a letter from the agency), and returned with the same letter the appellant received earlier indicating that she would be approved for day care upon receipt of additional paperwork. Both the judge and the appellant explained to the agency that she needed a final, not conditional, approval letter. The judge asked the agency to check with the appellant’s worker that they had received all the necessary documents, and if so, to provide an approval letter that day, with a second letter providing

reimbursement for the past payments. The hearing ended with the agency agreeing to do so.

In contrast to “The Missing Documents,” it was the agency, not the appellant, who was immediately put on the defensive. The judge struck a friendly and non-intimidating tone toward the appellant while treating the agency with skepticism. Instead of silencing the appellant at the beginning of the hearing when she spoke out of turn, the judge allowed her to present her case against the agency and to repeat it several times, accompanied by compelling personal pleas. He adopted her narrative and never gave the agency an opportunity to formally present its case. Instead it emerged in bits and pieces through his questioning. The judge’s questions contained explicit assumptions as to fault; for example, he asked the agency why it did not provide a notice to the appellant, not whether it issued a notice. The judge also joined with the appellant and helped her make her case, noting that she “made a compelling case.” The judge also went beyond the issue before him (reimbursement for past day care expenditures), securing for the appellant a crucial bureaucratic document establishing her present eligibility.

Moral Agents or Agents of Reform?

As the preceding cases illustrate, the judge largely determines whether a discourse of agency failure or individual moral failure dominates. Consequently, similar cases can result in different narratives. “The Missing Documents” and “The Lost Day Care Payments” both involved sympathetic appellants: one a woman with a severe mental disability, the other a woman struggling to support her family after her husband became severely disabled with a brain tumor. Both involved appellants found eligible for services over many years, but whose present application was missing required documents. Both also involved possible bureaucratic malfeasance. Yet in the case presided over by the moralist judge, that malfeasance remained unexplored. Under the reformer judge, it predominated. The reformer judge solved the problem and restored benefits; the moralist judge sent the appellant back to the agency to reapply.

Similarly, the work sanction cases were handled differently by the two types of judges. The moralist judge focused on the appellant’s work behavior, suggesting that he was able to work despite his impairments, while defending the agency’s actions. The reformer judge focused on factual discrepancies in the record rather than work behaviors and the sufficiency of the agency’s case against the appellant.

The judges differed in other ways; for example, some judges were more formal, and judges varied in how actively they engaged

with the parties.¹⁰ These cases, though, represent the two contrasting styles of judging within the hearing room that most affected which narratives emerged. For purposes of illustration I chose the two judges and cases that provided the most contrast between the two styles, with each of the other judges falling on a continuum from moralist to reformer. As described next, each style had its own distinctive characteristics, with different consequences for the appellants.

Moralist judges are more likely to form alliances with the agency and are less skeptical of it. They usually follow the agency's lead, leaning heavily on the agency's version as the benchmark. As one judge with this approach explained, "It's [the agency presentation] very helpful because then you are not groping blindly." Another explained, "It's important to keep the [procedural] order . . . If the appellant went first I would get a very confused account." Moralist judges are more likely to focus on the appellant's failure to follow bureaucratic rules, such as deadlines for submitting documents or reporting rules for work appointments.

By contrast, the reformer judges are more vigorous fact-finders. They are less likely than moralist judges to join with the agency, describing their relationship with them as "rough" or as a "test of wills." Consequently, they are less likely to accept the official version of the case and more likely to scrutinize it. As the judge who presided over "The Lost Day Care Payments" and "Already Working" explained, he liked "holding the agency's feet to the fire" and believed in a "level playing field" where the agency has to prove its case. While reformer judges also scrutinize the appellant's case, they are more alert to possible agency malfeasance. Such judges do not hesitate to correct the agency; in fact, some seem to relish pointing out its errors, from minor to major. As one judge put it, he enjoyed "having the opportunity to stop the agency from rolling over people who can't defend themselves."

Moralist and reformer judges also differ in how they perceive their role. Moralist judges narrowly define their role. As "The Missing Documents" and "Everyone Works" judge explained, "I consider myself as an enforcer of the law, not a mediator . . . Our job is not to resolve complaints; we are fact finders, enforcers of the law. It's a legal process not agency conflict resolution." She stressed the need to maintain control over often-unruly and confused appellants: "I don't want it to be a free-for-all but professional. I keep it professional because otherwise it is a set-up to brawl and people may attack the agency representative. In more formal courts, it's

¹⁰ It should be noted that the small sample size limited a deeper exploration of how other characteristics, such as gender, age, ethnicity, or experience, may have affected judicial styles.

more well-behaved, like a church. Our clientele are on the edge.” Another judge with a similar approach explained, “It’s one rolling cloud of things they are talking about,” thus requiring her to “be a little strict when I need to focus on clients.” To keep appellants in line, such judges sometimes use legal threats, such as adjourning the hearing if a disruptive appellant does not calm down.

By contrast, reformers describe their role more broadly. They often act as mediators between the parties, and sometimes even as advocates for the appellant when they think the agency’s actions warrant it. As one reformer judge put it, “I’m not a social worker but the job lends itself to that. I spend a little more time doing social work efforts I don’t have to do. I cut through the mess and help someone I make them feel comfortable and fix the situation.” In contrast to “The Missing Documents” and “Everyone Works” judge, who was not there to do “conflict resolution,” this judge actively encouraged the agency to settle cases (by withdrawing adverse notices) and was proud of her reputation for doing so. As she explained, “The judge usually has to be the one to advocate for that.”

The reformers also neutralize the drama and tension that characterize welfare interactions, avoiding, at least explicitly, making moral judgments about appellants. They are often protective of appellants, warning them, for example, not to make statements the agency might use against them. They strive, as one judge put it, to “ease the appellant’s anxiety.” As another judge with a similar approach explained, “I put myself in their place I want to make sure the appellant is relaxed and understands they will be heard. I try to keep it simple. I don’t like to talk over them I consider it a success if the appellant says they couldn’t sleep the night before worrying about the hearing but that it turned out OK.” When responding to irate appellants, rather than relying on legal threats, reformers employ such psychological devices as speaking slowly and calmly and allowing the appellant to “vent.”

These differing approaches have different consequences for the role hearings play within the welfare bureaucracy and how appellants experience hearings. Reformers, because of their willingness to settle conflicts and not just decide them, convert hearings into a negotiating tool for resolving disputes. Because they are more likely than moralists to scrutinize the agency and assist appellants, they minimize the power imbalance between the agency representative, who has a superior knowledge of the law and access to bureaucratic files, and the appellant, who is often uneducated and often unprepared.¹¹ Such appellants feel heard in the hearing room; as one such appellant reported about a hearing with the

¹¹ In 2006, 41.5 percent of TANF recipients had less than a high school education (U.S. Department of Health and Human Services 2006: n.p.).

judge who presided over “The Lost Day Care Payments” and “Already Working,” “The judge was fair, because he allowed me to talk—at times, when she [the agency representative] would not allow me to talk, the judge says ‘No, I want to hear his side. I want to hear what he has to say.’ And that was important to me because that’s all I needed, was just to be heard.” Another appellant echoed this description: “When I didn’t understand he would explain it to me. When the other woman (the agency representative) . . . was trying to cut me off . . . he would tell her ‘well, she’s showing proof to you . . .’ so he helped me out a lot.”

Appellants also perceive such judges as impartial despite their being situated within the welfare bureaucracy. As noted above, many appellants view the judges as extensions of the agency. Because they are government officials working for the same bureaucracy the appellants are challenging, judges must work harder than judges in more independent settings to establish their impartiality. Reformers are able to communicate this. As one appellant explained, “I kind of expected them to really be three against me, or looking at me like a monster.” He thought that while overall the judges “lean toward the system,” his judge “wanted it to be fair for both sides.”

By contrast, appellants before moralist judges reported much greater dissatisfaction with hearings. They felt both unheard and personally attacked. They described feeling “chastised” and made to feel “stupid.” They experienced their questioning as “badgering,” “grilling,” or “aggressive talk” and claimed their “words were twisted.” They believed they were not given enough time to present their case; as one appellant described her experience, the judge “was very black and white . . . it was very bing, bang, boom, next.” Another appellant was more explicit, commenting to herself after she left a hearing with “The Missing Documents” and “Everyone Works” judge: “The judge was a nasty bitch. She didn’t give me a chance to talk.”

Such appellants are more likely to blur the identities of the agency and the judge and are unconvinced of the latter’s impartiality. As one appellant described his experience with one such judge:

“I basically knew I was done as soon as it began . . . I started trying to present what I had, my pills and everything and you know she [the agency representative] started laughing at me. And I thought that was real inappropriate. And the judge just kind of went along with it. And to tell you the truth that was real embarrassing. . . . I wasn’t sure what to do . . . I felt like I was being downgraded.

Another said, “It was like I was being blackballed immediately.” From the appellants’ perspective, hearings became a site for

their surveillance, replicating their powerlessness rather than addressing it.

Discussion and Implications

Administrative hearings have been variously described as places of powerlessness for participants or as havens for protecting their rights. This study depicts a more complex and fluid forum that can function as a social space for enforcing normative values or for challenging them. Part government office and part judicial space, hearings can replicate the worst of the welfare bureaucracy but can also function as intended, as a check on agency arbitrariness or power. Both the purpose of hearings and the parties' social identities shift as orientations, alliances, and issues coalesce in the hearing room. The existence of both reformer and moralist judges suggests that legal decisionmaking within such administrative spaces is fluid, with judges wielding their power in very different ways.

Welfare law is embedded with assumptions about how people become poor and dependent on welfare. These assumptions include the belief that poor people behave irresponsibly and have poor attitudes toward work, and hence require behavioral incentives and sanctions in order to become self-sufficient (Munger 2002). The eligibility cases are fertile ground for enforcing these assumptions. The obligation of poor citizens to prove they are worthy of benefits finds their expression in these cases, where appellants' work habits and sense of responsibility are dissected. This is what occurred in "Everyone Works," where the judge depicted the appellant as a malingerer. Likewise, in "The Missing Documents," the judge transformed a common and prosaic dispute over the processing of documents in large bureaucracies into a morality tale where the appellant "willfully" decided not to provide documents.

Hearings presided over by moralist judges thus reproduce in style and substance the moral judgments that characterize welfare law and welfare interactions. Hearing rooms resembles the front lines, where "empowered citizen agents" dispense benefits based, in part, on who is a good or bad person (Maynard-Moody & Musheno 2003). Arguably, this is what the PRWORA, with its emphasis on personal responsibility over individual rights, requires. Moralist judges, by emphasizing the appellant's behavior and not the agency's, give meaning and effect to the law's elimination of welfare as an entitlement. They also enforce the normative judgments contained in the law of who is deserving of aid.

The Supreme Court in *Kelly* (1970), however, promised something different: to provide the powerless poor with an effective

mechanism for challenging the government welfare bureaucracy. The Court chose as its mechanism due process adversarial-style adjudications presided over by an impartial judge, and where the appellants have an opportunity to present their case orally. By silencing or redirecting appellants' counternarratives and replicating the inequities, rigid adherence to rules, and moral judgments that characterize front-line interactions, moralist judges block the ability of the participants to use hearings to challenge both the large and small of welfare law. Appellants cannot use hearings to challenge welfare law's dominant discourse as applied to all or as applied to them individually on the front lines. In this way, moralist judges fail to fulfill *Kelly's* promise.

Moralist judges also impart another lesson: that it can be risky to engage the formal legal mechanisms of government to challenge its perceived mistakes. Appealing to the state can further marginalize poor citizens rather than empower them as judges and lawyers interject their own interpretations of what is occurring (Merry 1990; Cowan 2004). Cowan (2004) observed this dynamic when applicants applying for homeless benefits in the United Kingdom engaged lawyers to argue their case with the bureaucracy. Because the dispute was no longer defined by them, "the attempt to gain power through law caused feelings of powerlessness" (Cowan 2004:945). Similarly, Bumiller (1987) has found that many victims of sexual discrimination avoid formal forums because of a fear of being victimized again.

Likewise, hearings presided over by moralist judges may leave appellants worse off for having challenged the bureaucracy. They reproduce and exacerbate the stigma and powerlessness of the front lines as the dispute is transformed from one against the state to one that implicates poor citizens' own moral and personal failings. Whether their accounts are accurate or not, appellants do not perceive moralist judges to be impartial, or willing to listen to them. As Tyler (2006) observes, procedural due process is as important, and perhaps more important, than substantive justice. Even an unfavorable hearing decision "can preserve the integrity of the decision making process" (Super 2005:1068) if appellants believe they are treated respectfully and are able to fully tell their story. A fair hearing can dispel notions that government officials act arbitrarily or irrationally or make decisions based on personal judgments, and it can convince appellants that both the agency and the judge are acting fairly and correctly (Super 2005). Because hearings presided over by moralist judges are perceived by appellants as missing the basic ingredients of a fair process, such hearings can degrade the relationship between citizens and their government.

In contrast to moralist judges, reformer judges play a more traditional judicial role, following the facts rather than focusing on the appellant's behavior. They are more likely than moralist judges to scrutinize the agency. Their inherent suspicion toward the

agency can, however, result in the appearance of bias. For example, in “The Lost Day Care Payments,” the reformer judge immediately adopted the appellant’s narrative and gives the agency little room to present its version. The truncating of the agency’s testimony, the implicitly biased questions, and the joining of the judge with one of the parties echoed, in part, the moralist judge’s style in “The Missing Documents.” However, because the hearing was not laced with authoritative personal judgments and was aimed at the more powerful of the two litigants (the agency), the consequences were different. While such judges risk abdicating their neutrality and hence harming the adjudicative process, they also level the playing field in a way moralist judges do not.

The existence of reformer judges also challenges past perceptions of fair hearings, and the welfare system they are a part of, as monolithic bureaucracies weighed down by legal rules and regularly wielding power in ways that disadvantage the poor (Handler 1986; White 1990a). The findings suggest that this result is not inevitable and that hearings are not an inherently flawed instrument ill-suited to disadvantaged citizens. The reformer judges, despite being part of the welfare bureaucracy and despite their social distance from the poor, invite and construct narratives that challenge the dominant discourse of both the welfare bureaucracy and society, which views welfare recipients as socially deficient and personally irresponsible. They are also willing to use their power to push back against the welfare bureaucracy they are a part of. This is what occurred in “The Lost Day Care Payments,” where the tables were turned on the agency and its power undercut by an assertive and critical judge and appellant. In “Already Working,” this same reformer judge helped the appellant challenge the agency’s depiction of her as falling short of her work obligations.

As Silbey observes, law is “constituted both by domination and resistance, consensus and conflict” (2005:341). Several scholars have documented the ways in which the disempowered look for those few spaces within the law where resistance is possible (Merry 1990; Sarat 1990; White 1990a; Yngvesson 1993; Cowan 2004). This study suggests that such spaces are flexible and fluid enough to be populated by official actors doing the same and who use their power not to dominate, but to expand the crevices where confrontation and resistance are possible.

References

- Abramovitz, Mimi (1996) *Regulating the Lives of Women*. Boston: South End Press.
- Adler, Michael (2008) “The Justice Implications of ‘Activation Policies’ in the UK.” Paper presented at the Joint Meeting of the Canadian Law and Society Association and the Law and Society Association, Montreal, Canada.

- Bane, Mary Jo, & David T. Ellwood (1994) *Welfare Realities: From Rhetoric to Reform*. Cambridge, MA: Harvard Univ. Press.
- Blank, Rebecca M., & Lucie Schmidt (2001) "Work, Wages and Welfare," in R. M. Blank & R. Haskins, eds., *The New World of Welfare*. Washington, DC: Brookings Institution Press.
- Brodkin, Evelyn (1986) *The False Promise of Administrative Reform: Implementing Quality Control in Welfare*. Philadelphia: Temple Univ. Press.
- Brodoff, Lisa (2008) "Lifting Burdens: Proof, Social Justice, and Public Assistance: Administrative Hearings," 32 *New York University Rev. of Law & Social Change* 131–89.
- Bumiller, Kristin (1987) "Victims in the Shadow of the Law: A Critique of the Model of Legal Protection," 12 *Signs: Journal of Women in Culture & Society* 421–39.
- Bussiere, Elizabeth (1997) *(Dis)Entitling the Poor: The Warren Court, Welfare Rights, and the American Political Tradition*. University Park, PA: Pennsylvania State Univ. Press.
- Charmaz, Kathy (2006) *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis*. Thousand Oaks, CA: Sage Publications.
- Conley, John M., & William M. O'Barr (1990) *Rules Versus Relationships: The Ethnography of Legal Discourse*. Chicago: Univ. of Chicago Press.
- (2005) *Just Words: Law, Language, and Power*. Chicago: Univ. of Chicago Press.
- Cowan, David (2004) "Legal Consciousness: Some Observations," 67 *The Modern Law Rev.* 928–58.
- Davis, Martha F. (1993) *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973*. New Haven, CT: Yale Univ. Press.
- Emerson, Robert M., et al. (1995) *Writing Ethnographic Field Notes*. Chicago: Univ. of Chicago Press.
- Gais, Thomas L., et al. (2001) "Implementation of the Personal Responsibility Act of 1996," in R. M. Blank & R. Haskins, eds., *The New World of Welfare*. Washington, DC: Brookings Institution Press.
- Gilliom, John (2001) *Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy*. Chicago: Univ. of Chicago Press.
- Handler, Joel F. (1986) *The Conditions of Discretion: Autonomy, Community, Bureaucracy*. New York: Russell Sage Foundation.
- Handler, Joel, & Yeheskel Hasenfeld (2007) *Blame Welfare: Ignore Poverty and Inequality*. Cambridge, UK: Cambridge Univ. Press.
- Hasenfeld, Yeheskel (2000) "Organizational Forms as Moral Practices: The Case of Welfare Departments," 74 *Social Service Rev.* 329–51.
- Kornbluh, Felicia (2007) *The Battle Over Welfare Rights: Poverty and Policy in Modern America*. Philadelphia: Univ. of Pennsylvania Press.
- Lens, Vicki (2007) "Administrative Justice in Public Welfare Bureaucracies: When Citizens (Don't) Complain," 39 *Administration & Society* 382–408.
- (in press) "Are Fair Hearings Fair? Examining Administrative Mechanisms to Correct Errors in Public Welfare Bureaucracies," *J. of Public Administration Research & Theory*.
- Lipsky, Michael (1984) "Bureaucratic Disentitlement in Social Welfare Programs," 58 *Social Service Rev* 3–27.
- Little, Deborah (1999) "Independent Workers, Dependable Mothers: Discourse, Resistance, and AFDC Workfare Programs," Summer *Social Politics* 161–202.
- Lurie, Irene (2006) *At the Front Lines of the Welfare System: A Perspective on the Decline in Welfare Caseloads*. Albany, NY: Rockefeller Institute Press.
- Maynard-Moody, Steven, & Michael Musheno (2003) *Cops, Teachers, Counselors: Stories from the Front Lines of Public Service*. Ann Arbor: Univ. of Michigan Press.
- Mead, Lawrence (1997) *The New Paternalism: Supervisory Approaches to Poverty*. Washington, DC: Brookings Institution Press.

- Merry, Sally Engle (1990) *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*. Chicago: Univ. of Chicago Press.
- Meyers, Marcia, et al. (1998) "On the Front Lines of Welfare Delivery: Are Workers Implementing Reforms?," 17 *J. of Policy Analysis and Management* 1–22.
- Munger, Frank (1998) "Immanence and Identity: Understanding Poverty through Law and Research," 32 *Law & Society Rev.* 931–67.
- (2002) "Dependency by Law: Welfare and Identity in the Lives of Poor Women," in A. Sarat et al., eds. *Lives in the Law*. Ann Arbor: Univ. of Michigan Press.
- New York State Office of Temporary and Disability Assistance (2007) *Statistical Report on the Operations of New York State Temporary Assistance Programs*. Table 31, p. 43. Administrative Hearings—Hearings Requested Total Temporary Assistance July 2006–June 2007.
- New York State Unified Court System (2009) New York City Small Claims Court, Civil Part, <http://www.nycourts.gov/courts/nyc/smallclaims/index.shtml>.
- Perales, Cesar (1990) "The Fair Hearing Process: Guardian of the Social Service System," 56 *Brooklyn Law Rev.* 889–98.
- Rector, Robert E., & Sarah E. Youseff (1999) *The Determinants of Welfare Caseload Decline*. Washington, DC: The Heritage Foundation.
- Riccucci, Norma M., et al. (2004) "The Implementation of Welfare Reform Policy: The Role of Public Managers in Front Line Practices," 64 *Public Administration Rev.* 438–48.
- Sandfort, Jodi R., et al. (1999) "The Mirror Has Two Faces: Welfare Clients and Front-Line Workers View Policy Reforms," 3 *J. of Poverty* 71–91.
- Sarat, Austin (1990) "'The Law Is All Over': Power, Resistance and the Legal Consciousness of the Participants," 2 *Yale J. of Law & Humanities* 343–79.
- Secombe, Karen (2007) *So You Think I Drive a Cadillac? Welfare Recipients' Perspectives on the System and Its Reform*. Boston: Allyn and Bacon.
- Silbey, Susan S. (2005) "After Legal Consciousness," 1 *Annual Rev. of Law and Social Science* 323–68.
- Smith, Dorothy E. (2005) *Institutional Ethnography: A Sociology for People*. Lanham, MD: AltaMira Press.
- Soss, Joe (2002) *Unwanted Claims: The Politics of Participation in the U.S. Welfare System*. Ann Arbor: Univ. of Michigan Press.
- Stimson, Gerry V. (1986) "Viewpoint: Place and Space in Sociological Fieldwork," 43 *The Sociological Rev.* 641–56.
- Super, David K. (2005) "Are Rights Efficient? Challenging the Managerial Critique of Individual Rights," 93 *California Law Rev.* 1051–142.
- Tyler, Tom (2006) *Why People Obey the Law*. Princeton, NJ: Princeton Univ. Press.
- U.S. Department of Health and Human Services (2006) Table 25. Temporary Assistance for Needy Families—Active Cases: Percent Distribution of TANF Adult Recipients by Educational Level October 2005–September 2006, <http://www.acf.hhs.gov/programs/ofa/character/FY2006/tab25.htm>.
- White, Lucie E. (1990a) "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.," 38 *Buffalo Law Rev.* 1–58.
- (1990b) "Goldberg v. Kelly: On the Paradox of Lawyering for the Poor," 56 *Brooklyn Law Rev.* 861–87.
- Yngvesson, Barbara (1993) *Virtuous Citizens, Disruptive Subjects: Order and Complaints in a New England Court*. New York: Routledge.

Cases Cited

- Dandridge v. Williams*, 397 U.S. 471 (1970).
Goldberg v. Kelly, 397 U.S. 254 (1970).

Statutes Cited

Personal Responsibility Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 402 (1996).

Social Security Act of 1935, Pub. L. No. 271, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. § 601 et seq.).

***Vicki Lens, JD, Ph.D.**, is an associate professor at the Columbia University School of Social Work. She previously worked as a legal aid attorney and as a New York State Assistant Attorney General. Her research interests include administrative justice in public welfare bureaucracies and welfare reform.*