Fairness in Ohio Agency Hearings

Chris McNeil
I. Why Winning Isn’t Everything – Even Though it Helps
   a. Defining “fair” as those principles ‘agreed to in an initial situation’
      before it is known whether the conditions will arise, assuming ‘every
      person is to have an equal right to the most basic liberty compatible
      with a similar liberty for others’.
   b. Winning in the context of a hearing that appears to be corrupt or
      wasteful tends not to engender a sense of fairness in the process or the
      outcome

II. What the Social Scientists Learned
   a. “Procedural justice” theory tries to determine what will lead people to
      conclude they have been treated fairly
   b. Consider both “social outcomes” – did you win or lose? And “social
      process” – have the norms of entitlement and propriety been fulfilled?
   c. Look first at “control-sharing with the third-party adjudicator”, and
      then look at non-control issues: neutrality, trust, and respect for social
      standing.
   d. For control-sharing – note that parties to a dispute prefer an
      adjudicator who shares with them control over the process. This
      includes:
      i. Control over the order of the hearing – who goes first? What’s
         the burden?
ii. Control over the gathering of evidence – is there discovery? 
   Can the State be compelled to disclose information in advance?
iii. Control over the adjudicator – is this shared through an elective 
   process, as in the case of elected judges, or does the agency 
   control selection, training, and retention of the adjudicator?
e. For non-control issues (called group value issues) – the social 
   scientists assume that “group membership is a powerful aspect of 
   social life” and “people are concerned about their long-term social 
   relationship with the authorities acting as third parties, and do not 
   view their relationship as a one-shot deal.”
   i. Neutrality – the ability to maintain a level playing field in the 
      adjudication process
   ii. Trust – the belief that the intentions of the adjudicators are 
       benevolent – that the judge desires to treat people in a fair and 
       reasonable way
   iii. Respect and social standing – showing respect for individuals’ 
       rights as a group member
f. Using regression analyses, Tyler and others in the 1980s established 
   that neutrality, trust and respect generally commanded more attention 
   than did control factors, when predicting whether participants thought 
   their adjudications were fair.

III. Procedural Justice in the Context of Agency Hearings
   a. We can anticipate dissatisfaction from participants in agency hearings 
      if we abuse the power to control the hearing process – either by 
      abdicating the role of third-party neutral, or by usurping the roles 
      participants believe should be retained by themselves.
      i. Who decides when a hearing is afforded?
      ii. Who decides who will serve as the adjudicator?
      iii. How much freedom or authority is invested in the adjudicator, 
          versus the prosecuting agency?
      iv. How actively involved in evidence gathering will the parties be 
          – will all of the significant evidence be presented by the 
          adjudicator, without much meaningful input by other parties?
      v. What’s the scope of the hearing – how much evidence will be 
          permitted, and how much will be barred?
      vi. How freely is information about the process shared with 
          outsiders, pro se litigants, and lawyers?
      vii. How effective is the adjudicator in keeping the hearing focused 
          and on track?
b. Participants will also be sensitive to features of hearings that affect the neutrality of the adjudicator, the trustworthiness of the adjudicator, and the respect given to the participants
   i. Is the adjudicator a tool of the agency?
   ii. How closely associated are investigators, prosecutors, and adjudicators?
   iii. Has the relevant participant community concluded the process or the adjudicators are untrustworthy?
   iv. Do the proceedings take place in a demeaning environment, particularly when compared with other judicial proceedings?

IV. The Fairness Survey
a. To be effective, we need to get feedback from all the participants: the licensee, counsel for the licensee, counsel for the state, and the agency director.

b. For feedback to be useful, it needs to be pervasive, free of bias, and transparent.

c. As a starting point, consider the survey used in the research supported by the National Science Foundation, in 2007.

Instructions: Please circle the answer that best responds to each question.

1. What best describes the kind of hearing you participated in?
   a. I appealed from a decision to suspend my driver’s license because of a claimed violation of the Financial Responsibility laws.
   b. I appealed from a decision to suspend my driver’s license because of a charge relating to driving while under the influence of alcohol or drugs.
   c. Neither (a) nor (b) applies.
   d. I don’t know what kind of hearing I participated in.
   [Note: if you answered (c) or (d) you may skip the remaining questions; thank you.]

2. What best describes the outcome of your administrative hearing?
   a. The case was concluded without a suspension or other penalty.
   b. The agency suspended my driver’s license.
   c. The agency did not suspend my driver’s license but imposed other penalties (e.g., fines, driver training, substance or alcohol education, etc.).
   d. The agency suspended my driver’s license and imposed other penalties.
   e. None of these applies.

3. Compare the outcome you expected before coming to the hearing, to the outcome you received:
   a. The outcome I received was better than what I expected.
   b. The outcome was about what I expected.
   c. The outcome was worse than what I expected.

4. Compare the outcome you received with the outcome received by most people who are charged with the same driving offense:
   a. The outcome I received was better than what most people get.
   b. The outcome I received was about the same as what most people get.
c. The outcome I received was worse than what most people get.

5. If you saw other cases while waiting for your hearing, compare the outcome you received with the outcome of those others you saw:
   a. I did not see any other cases.
   b. The outcome I received was more favorable than what others I saw receive.
   c. The outcome I received was about the same as what others I saw receive.
   d. The outcome I received was less favorable than what others I saw receive.

6. If you know of other drivers involved in similar cases, compare the outcome in your case to the outcome in the other case or cases:
   a. I don’t know of anyone who has had a similar case.
   b. The outcome I received was more favorable that the outcome of the others I know about.
   c. The outcome I received was about the same as the outcome in the other cases that I know about.
   d. The outcome I received was less favorable than the outcome of the others I know about.

7. How fair was the outcome you received?
   a. Very fair
   b. Somewhat fair
   c. Not very fair
   d. Not at all fair

8. How just and impartial was the hearing?
   a. Very just and impartial
   b. Somewhat just and impartial
   c. Not very just and impartial
   d. Not at all just and impartial
   e. 

Questions 9 through 14 concern the person who heard your case. This person might be called an Administrative Law Judge (ALJ), a Hearing Examiner, or a Hearing Officer. For this questionnaire we’ll refer to the person as an ALJ.

9. Did the ALJ have enough information to support the decision?
   a. Yes
   b. No
   c. I don’t know

10. Did the ALJ take all the evidence into account?
    a. Yes
    b. No
    c. I don’t know

11. Did the ALJ listen to your side of the story?
    a. Yes
    b. No
    c. I don’t know

12. Did the ALJ take enough time to carefully consider your case?
    a. Yes
    b. No
    c. I don’t know
13. Did the ALJ weigh the evidence from both sides equally?
   a. Yes
   b. No
   c. I don’t know

14. Was the ALJ unbiased?
   a. Yes
   b. No
   c. I don’t know

15. Did the police officers give testimony that you know was false?
   a. Yes
   b. No
   c. I don’t know

16. Were you (or your representative) given the opportunity to present evidence?
   a. Yes
   b. No
   c. I don’t know

17. What about the way your case was handled was fair (or unfair)? [Please answer in the space provided here.]

18. Please rate your satisfaction with the outcome of your case:
   a. Very satisfied
   b. Somewhat satisfied
   c. Not very satisfied
   d. Not satisfied at all

For the following questions, please indicate your satisfaction with the ALJ:

19. Please indicate how satisfied you were with the manner in which the ALJ handled your case:
   a. Very satisfied
   b. Somewhat satisfied
   c. Not very satisfied
   d. Not satisfied at all

20. Please rate the fairness of the ALJ’s handling of your case:
   a. Very fair
   b. Somewhat fair
   c. Not very fair
   d. Not at all fair

21. Please rate the ALJ’s overall performance of duties:
   a. Very favorable
   b. Somewhat favorable
   c. Not very favorable
   d. Not favorable at all
22. Where “courtesy” is used to mean the respect and dignity shown to you by the ALJ, please rate the ALJ’s courtesy:
   a. Very favorable
   b. Somewhat favorable
   c. Not very favorable
   d. Not favorable at all

23. Please rate the ALJ’s honesty:
   a. Very favorable
   b. Somewhat favorable
   c. Not very favorable
   d. Not favorable at all

24. Please rate the ALJ’s fairness:
   a. Very favorable
   b. Somewhat favorable
   c. Not very favorable
   d. Not favorable at all

25. How good a job is the agency doing in handling cases such as yours?
   a. Very good
   b. Good
   c. Not so good
   d. Not good at all

The following questions concern the agency’s relationship with the ALJ.

26. The ALJ who heard the evidence in your case is:
   a. Employed by the motor vehicle agency.
   b. Employed by a separate governmental office, such as an Office of Administrative Hearings, not part of the agency.
   c. Employed by the State Attorney General.
   d. I don’t know whether the ALJ was employed by the agency or by some other office.

27. The decision by the ALJ
   a. Was final and cannot be changed by the motor vehicle agency.
   b. Was only a recommendation and can be changed by the motor vehicle agency.
   c. I don’t know if the ALJ’s decision was final or just a recommendation.

28. The final order:
   a. Can be appealed to a court.
   b. Cannot be appealed to a court.
   c. I don’t know if the final order can be appealed to a court.

29. The ALJ’s goal in this case was:
   a. To decide the case on the facts and the law, regardless of the desires of the motor vehicle agency.
   b. To decide the case the way the motor vehicle agency wanted it decided.
   c. Neither a nor b accurately describe the ALJ’s goal in this case.
   d. I don't know what the ALJ's goal was in this case.
Procedural justice doctrine has long been a staple for social scientists when studying perceptions of fairness in judicial-branch trials.\(^1\) Funded by a grant from the National Science Foundation, researchers at the Grant Sawyer Center for Justice Studies at the University of Nevada—Reno, recently applied procedural justice doctrine to administrative proceedings at the state level.

Researchers presented surveys to individuals who sought an administrative hearing relating to alleged violations of state implied-consent laws. Eight hundred fifty surveys were either mailed or personally given to drivers in New York, Florida, and California (where the administrative law judge (ALJ) is an employee of the state motor vehicle agency) and Maryland, Oregon, and Texas (where implied-consent hearings are conducted by ALJs working in state central panels that are structurally separated from the motor vehicle agencies). These were mailed after the drivers learned the outcome of their hearing, and asked drivers to report whether the process, the ALJ, and the outcome were fair.

In addition, an online nationwide survey was made available to attorneys whose practice includes representing drivers in state administrative implied-consent hearings, and to ALJs whose dockets include this kind of hearing. In these cases, respondents were asked to rate the fairness of implied-consent hearings in their jurisdiction, including whether the process in their state generally is fair, and whether the outcome in these cases tends to be fair or unfair.\(^2\)

The purpose of the research was to determine whether the structure of agency adjudication—i.e., whether the adjudicator is an employee of the agency or an employee of a central panel that is independent of the agency—makes a difference in the participants’ perception of the fairness of the adjudication. The goal was to empirically test participants’ subjective reaction to actual administrative adjudicative processes. The general research question was: what effect, if any, does the degree of structural independence of the administrative adjudicator have on the participants’ perception that the process was fair?

We know outcomes are a major determinant of satisfaction and the perception of fairness, based on “social exchange” theory described by Thibaut and Kelley.\(^3\) But we also know that winning or losing isn’t everything, and that the use of fair procedures can increase the satisfaction of all concerned without any increase in the real outcomes available for distribution.\(^4\)

\(^2\) All of the survey questions and answers, including answers to the open-ended question “what about the hearing was fair (or unfair)” are available at http://works.bepress.com/cbmcيل/12/.
Participants make distinctions between "decision control" and "process control," court procedures that vest process control in the hands of those affected by the outcome of a procedure are viewed as more fair than procedures that vest process control in the decisionmaker. It thus makes sense to examine participants' perception of fairness, even though they may have lost during the hearing, in order to determine whether there are controls over the process or over the decision that correlate to the participants' sense that the hearing was fair.

Procedural justice doctrine
In his work surveying defendants in traffic and misdemeanor cases, Tom Tyler asked a series of questions about the procedural and distributive fairness of the respondents' courtroom experience. He found attitudes about the outcome, the judge, and the court all were strongly related to fairness judgments. So too here: we can anticipate the participants will be concerned about not only the outcome, but also the adjudicator's control over the forum. We can anticipate that the more the process is controlled not by the agency but instead by the participants, the greater will be the participants' sense of fairness.

Since the early 1980s, a majority of the states (now 26) have created centralized panels of executive-branch adjudicators. Central panel ALJs don't work for any given agency—they are available when an agency needs an adjudicator, but the agency itself does not hire, discipline, or select central panel ALJs. This stands in contrast to the more traditional agency ALJ, who is supervised by the same entity that investigated the events causing the prosecution of the action, and made the decision to initiate a given agency action. Given the demonstrated trend toward an administrative hearing that tends to be more judicial than institutional, lawmakers should know whether the trend away from agency ALJs in favor of central panel ALJs actually leads to greater trust and confidence in the central panel structure when compared with the non-central panel structure.

Statistical analysis
One of the main goals of the field study was to gather sufficient data to allow for a prediction having to do with the use of central panels. The null hypothesis is that it makes no difference whether the hearing is conducted by an ALJ who is either part of a central panel or is employed directly by the agency (here the agency would be the state department of transportation). Data gathered from drivers, defense counsel, and ALJs who have been involved in administrative license suspension cases may, or may not, disprove the null hypothesis.

Indeed, given the analytical tools provided to us by Thibaut and Walker, and Lind and Tyler, we predicted that central panel systems would foster an environment conducive to greater levels of perceptions of fairness, at least with respect to the litigants and observers (although not necessarily with respect to ALJs). The data seems to confirm that hypothesis: generally, defense attorneys and drivers reported greater levels of subjective fairness perceptions in central panel adjudications than in adjudications controlled by the departments of motor vehicles.

Limitations
A caveat is in order about the use of statistics to prove whether central panels provide a structure more likely to produce perceptions of fairness than do agency-operated hearings. Most scientists, Professor Faigman explains, "begin with the assumption that the phenomenon they are studying does not cause the effect that they expect." We should, he notes, "presume innocence" and only with strong proof reject that presumption. That presumption applies here, so that without strong proof we should reject the research hypothesis that central panel structures are an appropriate predictor of increased levels of fairness perceptions by participants or observers.

"The convention applied by most scientists is that the null hypothesis should not be rejected unless the chances of making a mistake are less than five in one hundred." This is how we come to look for "confidence" levels, expressed as a p-value of .05. The p-value is "the probability of getting data as extreme as, or more extreme than, the actual data, given that the null hypothesis is true."

The null hypothesis here is that going to a central panel of ALJs won't improve (or hurt) procedural justice values experienced by the participants or observers. Small p-values (notably those smaller than .05) are

8. Id.
9. Id.
**Table 1: Question 29, Fairness of the Handling of Your Case**

<table>
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<th></th>
<th>Very Fair</th>
<th>Somewhat Fair</th>
<th>Not Very Fair</th>
<th>Not Fair at All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central panel (n=16)</td>
<td>12.5</td>
<td>43.8</td>
<td>31.3</td>
<td>12.5</td>
</tr>
<tr>
<td>Non-central panel (n=35)</td>
<td>11.4</td>
<td>11.4</td>
<td>22.9</td>
<td>54.3</td>
</tr>
</tbody>
</table>

(p for effect of central panel vs. non-central panel: p=.067)

**Table 2: Question 23, Fairness of the ALJ’s Handling of Client’s Case**

<table>
<thead>
<tr>
<th></th>
<th>Very Fair</th>
<th>Somewhat Fair</th>
<th>Not Very Fair</th>
<th>Not Fair at All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central panel (n=40)</td>
<td>7.5</td>
<td>17.5</td>
<td>55.0</td>
<td>20.0</td>
</tr>
<tr>
<td>Non-central panel (n=110)</td>
<td>2.7</td>
<td>14.5</td>
<td>33.6</td>
<td>49.1</td>
</tr>
</tbody>
</table>

(p for effect of central panel vs. non-central panel: p=.378)

evidence that centralization makes a difference, whereas large $p$-values argue against such an impact. The larger the $p$-value, the easier it is to conclude these differences between central panels and agency hearings can be attributed to chance.

Professor Faigman explains that requiring $p$-values of not more than .05 “is merely a convention, and most scientists take findings with rates between .01 and .10 very seriously,” adding that the standard a scientist adopts “is ultimately dictated by policy, not science.”11 That being said, there are some very good reasons for forbearing in reaching too firm a conclusion with respect to the research hypothesis. If we unhitch ourselves from the yoke of statistics we may make some general observations, but those observations should not be confused with claims of statistical significance.

**Examination of data**

Consider the data collected for Driver Question 29 (see Table 1).

Taken at face value, these percentiles suggest that perceptions of unfairness were attenuated somewhat in central panels, with 43.8 percent thinking their hearings were “not very fair” or “not fair at all,” compared with 77.2 percent of drivers in agency hearings who felt the ALJ’s handling of their cases was either not very fair or not fair at all. This would seem to support the research hypothesis, that the central panel ALJs afforded fairer hearings. Using the Statistical Package for the Social Sciences (SPSS) General Linear Model to conduct an analysis of variance (ANOVA), with central panel versus non-central panel as the independent variable, and treating “don’t know” answers as having missing data, the $p$-value is <.067.12 Thus, while greater than .05, the $p$-value is within limits that many would regard as sufficiently significant to reject the null hypothesis and conclude that a central panel tends to reduce driver perception that the hearing was unfair.

Contrast this with the result from the same question asked of defense counsel (Table 2). Here, 75 percent of counsel in central panel states found the fairness of the hearing either not very favorable or not favorable at all, contrasted with 82.7 percent of defense counsel in non-central panel states. This again suggests the use of a central panel mitigates the feeling of unfairness by defense counsel, but at $p=.378$, the $p$-value substantially exceeds .05 and .10, forcing the conclusion that this would not be a useful predictor, at least not with the data presently on hand.

**Anecdotal evidence**

The surveys used to gather data from ALJs, defense counsel, and drivers included one open-ended question: “What about the hearing was fair (or unfair)?” The overwhelming response from the responses of drivers and defense counsel is that they perceive administrative license suspension hearings as being unfair. The responses offer something of a clue to what’s behind this perception.

**Responses from drivers**

“Personally I think it was unfair for the reason that the officer, Willie Jones, lied and the fact that he raised his right hand and swore that he will tell the truth and he did not. [The ALJ] heard what my attorney had to say in my behalf but he never heard what I had to say.”

“The woman hearing my case had clearly already made her decision before we sat down for the hearing. She looked at me with distaste and talked to me in a condescending manner as well as with attitude. She did not even consider my testimony.”

“The judge is only an employee of the Dept. of Motor Vehicles and is very biased. Does not comply w/ court recommendations and makes their own law. They are never unbiased in any case, despite superior court’s recommendations. They are a separate agency w/ their own agenda, regardless of the court. I cannot emphasize this enough. The DMV overpowers the court and suspends licenses which put an extreme hardship on rural people w/ no public transportation. Without a limited license, of course the person is unable to attend school, etc. & is subject to arrest. It is a never ending circle.”

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12. Grateful acknowledgement is made here to Professor Michael J. Saks, Ph.D., Arizona State University, Sandra Day O’Connor College of Law, for his assistance in analyzing these data.
From drivers in central panel states:

"The case was postponed because officer was not present—that is unfair—also, judge present[ed] the MVA evidence. Point blank, it’s your word versus the police officer’s written testimony in which they view as ‘facts,’ making it a no-win situation."

"The officer provided false information. It had all the appearance of a kangaroo court."

**Responses from defense counsel**

Similarly, defense counsel responses were roundly negative and highly critical of the hearings, first from counsel to the contrary. They are basically ‘rubber stamps.’ After all, they are not real judges but executive branch employees who can be transferred around the state at will.”

"No excuse for a refusal was going to be considered. The decision was based on a policy adopted by ‘higher ups’ and the ALJ stated he had no ability to rule anyway but with the pre-established policy.”

"There is always a presumption that all evidence provided by law enforcement is truthful—even when much of it is demonstrably false. The judges believe that if they rule for the criminal case, more than for the purported issue.”

"Petitioner was accorded all due process rights to contest the license suspension.”

**Implications**

The gap between ALJs (who found the proceedings to provide fair outcomes and a fair process) and drivers and defense counsel (who found both the process and the outcome to be unfair) permeates the research results. While making no claim to statistical significance, the data suggest at the very least a profound level of distrust, hopelessness, and anger on the part of those whose licenses are at stake and those who serve in the defense of licensees.

At the same time, there appears to be at least some hint of confirmation that the research hypothesis is correct. There was, for example, no instance where agency-run hearings were deemed fairer, more just, or more impartial, than central panel hearings, and in each metric the central panels produced higher positive perceptions of procedural justice, both in objective and subjective measures. Similarly, group-value metrics (including ALJ courtesy, honesty, and bias) tended to show higher positive values for ALJs in central panels than in agency-run hearings.

The data thus support the general premise of the research hypothesis—that central panel adjudications can and may lead to higher positive levels of procedural justice by drivers and defense counsel. Keeping in mind the limitations applicable to the data due to insufficient response levels, there is at least some evidence that participants do see central panel hearings as being fairer. When drivers whose licenses were suspended were asked, “How fair was the outcome you received,” 50 percent of the drivers in central panel states found the outcome was either very fair or somewhat fair, contrasted with 25 percent of drivers in agency-operated states; while drivers in agency operated states described the outcome as either not very fair or not fair at all in 75 percent of the cases,

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**THE LAW IS PRETTY CLEAR ABOUT IMPLIED CONSENT AND FAILING A BLOOD TEST.**

in agency-operated hearings:

"It was all unfair, in the sense that the hearing officer didn’t even apply the law to the uncontradicted facts in the case.”

"We are scheduled to conduct two hearings every 15 minutes. The amount of time allotted is inadequate to present any kind of a case. Further, Kansas allows no pre-hearing discovery at DL hearings, so you are walking into these hearings with no idea what the testimony will be except for what your client remembers about the stop and testing process.”

"ALJs in WA go out of their way to find for the Dept. and suspend licenses. It is in no way fair, and is a mockery of justice. They actually have a goal of reducing the number of dismissals, and view their job as part of the system designed to remove drunk drivers from the road, not to provide people accused of drunk driving a fair hearing.”

From defense counsel in central panel states:

"The officer was allowed to testify about hearsay, his conclusions (i.e., opinions) were taken at face value, and the ALJ ignored strong evidence"
compared with 50 percent of the drivers responding this way in central panel states ($p=.056$). When asked “did the ALJ listen to your side of the story?” 59 percent of central panel drivers said “yes,” in contrast to 35 percent of drivers in hearings conducted by the agency ($p=.028$).

Only 17 percent of the drivers in agency-run hearings described their ALJs as being unbiased, compared with 24 percent of drivers in central panel states ($p=.099$). When asked about ALJ courtesy (i.e., treatment with respect and dignity), 82 percent of drivers in central panel cases rated their ALJs either very or somewhat favorably, compared with only 36 percent of drivers appearing in agency-operated hearings ($p=.031$). Only 28 percent of the drivers in agency-operated hearings regarded the ALJ’s handling of the case as either very fair or somewhat fair, compared with 56 percent of drivers in central panel states ($p=.067$).

Asked whether the ALJ “listened to your side of the story,” 24 percent of the drivers in central panel states said “no,” compared with 47 percent of the drivers in agency-operated hearings ($p=.028$).

When asked simply to rate the fairness of the ALJ, 80 percent of the drivers in agency-operated hearings responded either not very favorable or not favorable at all, contrasted with 50 percent of drivers in central panel states ($p=.066$). Not surprisingly, drivers in central panel states were more satisfied with the outcome of their cases, with 47 percent either being somewhat or very satisfied, compared with only 14 percent of the drivers in agency-operated hearings ($p=.007$).

To much the same effect, defense counsel familiar with these hearings tended to find central panel hearings to be fairer. Only 5 percent of defense counsel in agency-operated hearings considered the ALJ to be unbiased, compared with 15 percent of counsel in central panel hearings ($p=.086$). Eighty-three percent of defense counsel in central panel hearings reported very favorable or somewhat favorable experiences of ALJ courtesy, compared with only 59 percent of counsel in agency-operated hearings ($p=.46$). And a rather appalling 90 percent of defense counsel in agency-operated hearings found the job the agency was doing was either not so good or not good at all, compared with an almost as dismal 63 percent of defense counsel in cases run by central panels ($p<.001$).

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The data suggest a tendency, at least, that the efficiency obtained by agency adjudications comes at a price. Thibaut and Walker saw that an inquisitorial model threatens the perception of procedural justice, and these data seem to confirm the threat exists today in agency hearings. It is no doubt efficient to provide “some kind of hearing” to drivers accused of violating state implied consent laws. The data suggest that participants tend to view with suspicion both the process and the outcome when the investigative agency conducts the administrative hearing, and find it to be fairer if the adjudicator in OMVI administrative license suspension hearings is not controlled by the agency.

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