

WSP and DOL: the Long and Strong Arm of DUI Enforcement

This article explores two issues: Department of Licensing (DOL) goals in direct conflict with due process, and Washington State Patrol (WSP) interference with due process hearings.

In today's mobile society, the ability to drive is virtually indispensable to employment and daily requirements of modern life. Thus, a driver's license is an important property interest that must be protected against an erroneous deprivation. Our constitution requires that Department of Licensing hearings be free from *prejudice*, fair, *meaningful* opportunities to be heard, and that the tribunal (the department) be *impartial* and *disinterested* in the result. Washington Citizens delegated this duty of constitutional magnitude to DOL through Initiative 242. Should citizens reassess the worthiness of that delegation?

Well, DOL's latest *Strategic Plan* boldly proclaims, "**we plan to reduce the driving under the influence (DUI) administrative suspension dismissal rate.**" This shocks the conscience! *The agency entrusted with the constitutional duty to be fair, impartial and disinterested in the outcome of hearings publicly announces its goal is to suspend more driver's licenses!*

It gets worse--DOL uses dismissal rates as a measure of performance! Through public disclosure requests to DOL and WSP, the author has discovered evidence of institutional bias against drivers at DOL, and of serious untoward pressure by WSP on the hearing decision makers.

In an email from DOL Administrator Craig Nelson to all Hearing Officers (HOs):

"The overall dismissal rate is 21%...a marked improvement from just a year ago.... The dismissal rate and our appeal rate are tentatively our designated measures...I want to particularly recognize the work of hearing officers in region 3. They...were below 20% in dismissals. [Names omitted] deserve our thanks and a round of applause".

Hearing Officer K. Koehler, with courage and astute awareness of the gravity of the situation replied,

"Craig – Do you really think that one of our 'measures of performance' should be the dismissal rate?...Using dismissals as a measure of performance is like telling us that we will be rewarded for not dismissing cases. I don't think that

measure fits very well with affording Petitioners all of their due process rights, particularly the "appearance of fairness." Can you imagine what the defense bar would do with that "measure of performance" in the appellate courts?"

Governor Gregoire, can we have Ms. Koehler in charge of DOL? She seems to understand due process and the Constitution.

DOL has target dismissal rates! From E. Graham to Nelson:

"It looks like an overall dismissal rate of 25% was the target until July 2004 when it changed to 20%....If we extended out further it drops again to 15%."

Meanwhile, the WSP "continues to work closely" with DOL to reduce "dismissals statewide." *3Q06 Rpt.* WSP is "striving for a DOL dismissal rate of less than 10%," will "monitor dismissals by hearing officer," and has hired "actual defense attorneys" to assist with mock testimony. Hearing Officers must email every dismissal to WSP Lt. Reichert. In return, he comments to Nelson or others:

- To Dr. Logan: **"FYI--dismissal number 18 and counting--just for today--DOL seems to be having a hay day with this one."** (*City of Seattle v. Clark-Munoz*, non-compliance with WAC 448-13-035; of course, HOs had no choice but to dismiss)
- To Nelson: **"Craig, I am disappointed with this dismissal ... the HO found every possible reason to look for a dismissal here. I find this dismissal extremely nitpicky..."** (No second mouth check after break in observation period).
- To Nelson: **"Craig...I am going to take a stand on this one...the trooper did indicate that the roadway was covered with snow but...we do not give free passes for people to be all over the road just because some lines may not be visible at times."** (Nelson's response: "You're right. I'll talk to her.") (Then WSP Chief Beckley: **"Have we had issues with this hearing officer prior before?"**)
- To Nelson: **"Craig...If the trooper stopped the vehicle for not displaying a vehicle license plate light and articulated that in his report I have to give the credibility to the trooper."** (Video indicates the plate is visible in the dark and probably illuminated.)

In 2006, Reichert suspects HOs are not sending him dismissals and he emails

Nelson who tells the HOs: **"it helps them and us."** Various Hearing Officers respond:

- **"Only if it is promised that the hearing officer does not get an irate phone call from an officer complaining about a decision"**
- **"Or forwarded a nasty email criticizing the legal analysis of the hearing officer"**
- **"Or the chief of the WSP complaining directly to the director because he does not agree with the decision"**

This entire chain, identifying each hearing officer, was inadvertently cc'd to WSP and caused some discussion as to how to mend fences. Suggestions included a meeting with the director of DOL and orders to troopers not to contact individual HOs. They decided to give Nelson an award.

Finally, in a very disturbing string of emails, Trp. Denton complained to a DOL manager about a particular Hearing Officer and she told him the Hearing Officer was "her biggest problem." The emails state Nelson also sides with the trooper over the Hearing Officer. Chief Beckley responds to his underling:

"You are doing the right thing by bringing these to the attention of the supervisor. If there is one particular hearing officer who is continually dismissing on minor technicalities (that even the supervisor agrees is in error) we need to elevate the discussion a level with either you or Dr. Logan to the next level in DOL."

Thus, Hearing Officers face institutional pressure from within not to dismiss cases given the target dismissal rates. Then, when due process or the constitution requires that they must dismiss a case, they face harassment and criticism from law enforcement, *to the extent that high levels of command at WSP suggest "elevating" discussions about them to the next level with their employer!* And they have no comfort there either, because rarely, do those in authority above them take their sides or cover their backs.

When can a citizen facing a license suspension, have a fair, impartial, unbiased hearing with a department that has no interest in the outcome? When such hearings are moved from the Department of Licensing to another branch of our government.

Linda M. Callahan
(c) November, 2007



C A L L A H A N L A W
DRIVEN... IN DEFENSE OF THOSE WHO DRIVE

877 DUI-answer

dui-defender.net

lawyer@dui-defender.net

- A D V E R T I S E M E N T -

