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The Modern Hearsay Rule Should Find Administrative Law Application

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I. INTRODUCTION

Both administrative law traditionalists and modern evidence law commentators have criticized technical evidence law principles, particularly the hearsay rule. Much of the criticism relates to the concern that hearsay rule application could, and does, unjustly exclude significant amounts of relevant proofs. These critics have largely signaled their desire for hearsay rule modification, repeal, or nonuse.[1]

Early advocates of the administrative law process[2] suggested that the hearsay rule be completely excluded from administrative law ap-

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1. *See* Richard D. Friedman, *Toward a Partial Economic, Game-Theoretic Analysis of Hearsay*, 76 MINN. L. REV. 723 (1992) (proposing courts should admit hearsay if it is more probative than prejudicial, but permit the party opposing the hearsay to keep such hearsay out if that party produces the declarant at trial); Roger Park, *A Subject Matter Approach to Hearsay Reform*, 86 MICH. L. REV. 51 (1987) (advocating liberalized hearsay rules in the civil, but not criminal, context); Eleanor Swift, *Abolishing the Hearsay Rule*, 75 CAL. L. REV. 495 (1987) (recognizing relevant, non-prejudicial hearsay statements should be admitted, but only where the hearsay proponent can provide evidence of the declarant's testimonial qualities by way of foundation witnesses and only where the admission of hearsay statements would not work to shift the burden of proof to the opposing party).
2. For a general discussion of the circumstances in which an administrative hearing may be required, and the procedural protections that must be offered during such a hearing, see Frederick Davis, *Judicialization of Administrative Law: The Trial-Type Hearing and the Changing Status of the Hearing Officer*, 1977 DUKE

plication. These commentators were concerned that the hearsay rule would disrupt the administrative law process and cause much delay in its principle task of securing efficient and just dispositions for the claimant.[3] Many of these same commentators were likewise concerned that a disproportionate amount of administrative time would be spent deciphering and resolving hearsay rule challenges.[4] Thus, early proponents of the administrative law process rejected entirely hearsay rule application to administrative hearings.

Modern evidence commentators continue to challenge the hearsay rule in general jurisdiction trials. Because framers of modern evidence codes remain committed to common-law principles, evidence rules of today, like the Federal Rules of Evidence, retain much of the underlying common-law theories of development, including the hearsay rule.[5] However, these framers recognized the practical need for expanded use of hearsay evidence proofs. Modern codes of evidence have expanded the common-law categories of hearsay exceptions[6] while simultaneously restricting, somewhat, the common-law definition of hearsay.[7] The effect of such modern codification changes is to give the litigator of today freer use of hearsay proofs.

Irrespective of these modern code revisions, many evidence commentators continue to criticize hearsay rule application in general jurisdiction courts.[8] Their criticism significantly relates to continued doubts as to the underlying reliability of select common-law developed exceptions. Much of their concern centers on the notion that many of the categorical exceptions, such as the excited utterance, dying declaration, and declaration against interest, were historically supported by general common-law claims of reliability, which if today were subject to empirical social studies challenge would hardly find renewed reliability.[9] The drafters of the Federal Rules of Evidence were aware

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L.J. 389, 393-400, and Bernard Schwartz, *Administrative Law: The Third Century*, 29 ADMIN. L. REV. 291, 299-309 (1977).

3. *See* Kenneth Culp Davis, *Hearsay in Administrative Hearings*, 32 GEO. WASH. L. REV. 689 (1964); Ernest Gellhorn, *Rules of Evidence and Official Notice in Formal Administrative Hearings*, 1971 DUKE L.J. 1, 12-17.
4. *See* Gellhorn, *supra* note 3, at 14-15.
5. *See* FED. R. EVID. 802; *see also* FED. R. EVID. Art. VIII advisory committee's introductory note.
6. *See* FED. R. EVID. 803, 804, 807.
7. *See* FED. R. EVID. 801(d).
8. *See* Friedman, *supra* note 1; Park, *supra* note 1, Swift, *supra* note 1.
9. *See* Ronald J. Allen, *Commentary on Professor Friedman's Article: The Evolution of the Hearsay Rule to a Rule of Admission*, 76 MINN. L. REV. 797, 801 (1992) (noting "the complete lack in the literature for over twenty years of any effort to provide a justification for the hearsay exceptions"); *cf.* Stephan Landsman & Richard F. Rakos, *Research Essay: A Preliminary Empirical Enquiry Concerning the Prohibition of Hearsay Evidence in American Courts*, 15 LAW & PSYCHOL. REV. 65 (1991) (suggesting preliminary empirical data indicates the basic premise for

of such criticism, but remained committed to common-law principles, and thus acknowledged many of these subject categories of exception.[10]

Many evidence commentators of today remain concerned that the hearsay rule, albeit reformed, continues to exclude significant relevant proofs, thereby compromising the truth finding process. This argument presupposes the fact that there are no virtues for the American trial other than truth finding. This contention is false. In our system of justice there are many important principles for the exclusion of relevant evidence which similarly impact on claims of truth. Character evidence rules,[11] privileged communication principles,[12] and authentication requirements[13] are among the many exclusionary rules that both general jurisdiction courts and the administrative law tribunals recognize. Though many advocates have taken issue with the hearsay rule, these advocates have never advanced the thought that these diverse evidence rules should be abandoned because of their respective impact on the truth finding process. It is a widely accepted principle of Anglo-American law that not all relevant evidence is admissible. Given that the American trial system is designed to promote both truth and justice, evidentiary rules that exclude potentially relevant evidence should not find rejection.

Administrative law traditionalists were well aware of these complex arguments against using the hearsay rule. They resolved such disputes by advocating that the hearsay rule be excluded from the administrative law process. Perhaps this over-reaction led to the admission of problematic proofs to the argued detriment of the administrative law process.

The often heard justifications for allowing hearsay proofs in the administrative law process relate (1) to the acknowledged absence of lay jury triers of fact and (2) to claims that the administrative law judge is uniquely qualified to resolve complex issues of fact and law. These arguments are makeweight.

Early proponents of the administrative law process were convinced that the absence of a jury was reason enough to exclude hearsay rule application from agency adjudication.[14] Though historically the hear-

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the exclusion of hearsay, that jurors are incompetent to effectively evaluate hearsay, is incorrect).

10. *See* FED. R. EVID. 803, 804, 807.
11. *See* FED. R. EVID. 404.
12. *See* FED. R. EVID. 501.
13. *See* FED. R. EVID. 901.
14. The Attorney General's Committee on Administrative Procedure argued "[t]he absence of a jury and the technical subject-matter with which agencies often deal, all weigh heavily against a requirement that administrative agencies observe what is known as the 'common law rules' of evidence for jury trials." COMMITTEE ON ADMIN. PROC., ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES, S. DOC.

say rule was inspired by the jury system in general jurisdiction matters, application of the modern hearsay rule is not reserved to jury trials. The Federal Rules of Evidence make no distinction between bench and jury trial for hearsay rule use.

Allowing administrative law judges to ignore judicial rules of evidence because of their claimed expertise cannot be justified either. Our nation's general jurisdiction judges, who likewise deal with sophisticated issues and are singularly knowledgeable about trial processes, are bound by the institutional rules of evidence, generally without exception. The Federal Rules of Evidence were designed to limit judicial power over the admission of evidence without resort to whether or not the fact finder was a jury or judge. The claim that subject matter sophistication should control standards of evidence credibility review is most problematic. Indeed, some courts and statutes require administrative law judges to comply with judicial rules of evidence to ensure the fairness of administrative proceedings.[15]

Consistent with administrative law tradition, Congress enacted the Administrative Procedure Act.[16] This legislation rejected common-law technical application of the Rules of Evidence, including the hearsay rule. Though the Administrative Procedure Act retained certain general limits on the admission of evidence, such as relevance, materiality, and avoidance of unduly repetitious proofs, the hearsay rule remained inoperative in administrative law proceedings.[17]

No. 77-8, at 70 (1941), *reprinted in* ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES 70 (Charles K. Woltz ed., 1968).

15. *See* Johnson v. Department of Health & Rehabilitative Servs., 546 So. 2d 741 (Fla. Dist. Ct. App. 1989); Eastman v. Department of Public Aid, 534 N.E.2d 458 (Ill. App. Ct. 1989); Kade v. Charles H. Hickey Sch., 566 A.2d 148 (Md. Ct. Spec. App. 1989); Sims v. Baer, 732 S.W.2d 916, 920 (Mo. Ct. App. 1987); Anaya v. New Mexico State Personnel Bd., 762 P.2d 909, 913-15 (N.M. Ct. App. 1988); Philadelphia Elec. Co. v. Commonwealth Unemployment Compensation Bd. of Review, 565 A.2d 1246, 1248 (Pa. Commw. Ct. 1989).

    In 1947, the United States Congress enacted the Labor Management Relations Act, which amended the National Labor Relations Act to provide that National Labor Relations Board hearings should be conducted in accordance with federal evidence law then in effect in nonjury litigation. *See* Labor-Management Relations Act, ch. 120, sec. 101, § 10(b), 61 Stat. 136, 146-47 (1947) (codified as amended at 29 U.S.C. § 106(b) (1994)). Similarly, the United States Department of Labor, for its administrative hearings, adopted a set of evidence rules similar to the Federal Rules of Evidence, including the hearsay rule, with modification. These rules include a liberal application of the hearsay rule and its exceptions. *See* 29 C.F.R. §§ 18.801-.806 (1997).

16. Administrative Procedure Act, ch. 324, 60 Stat. 237 (1946) (codified as amended in scattered sections of 5 U.S.C.).

17. *See* Administrative Procedure Act, ch. 324, § 7(c), 60 Stat. 237, 241 (1946) (codified as amended at 5 U.S.C. § 556(d) (1994)); *see also* BERNARD SCHWARTZ, ADMINISTRATIVE LAW § 7.2, at 371-73 (3d ed. 1991).

II. RESOLVED—THE MODERN HEARSAY RULE SHOULD FIND APPLICATION WITHIN THE ADMINISTRATIVE LAW PROCESS

Administrative adjudication today, in reality, appear functionally equivalent to federal and state civil nonjury trials. These nonjury trials do apply strict hearsay evidence rules where appropriate. It follows, then, that such evidentiary holdings should apply to administrative adjudications as well.[18] The need for judicial rules of evidence, more particularly the application of the hearsay rule, is more urgent in administrative proceedings than it is under general jurisdiction settings. This is so because lay commissioners often review the evidence record in administrative proceedings. A lay administrative commissioner often is unfamiliar with technical evidence rules, and therefore might give disproportionate deference to a problematic administrative hearing record, leading to an unfair disposition. Application of the theories of evidence law, including the hearsay rule, would perhaps reduce the potential for such unfair results.

Though courts have historically adhered to administrative restrictions on hearsay rule application,[19] they have continually noted the credibility risks inherent in the admission of hearsay proofs.[20] This concern resulted in the judicial formulation of the residuum rule, as applied in administrative proceedings.

The residuum rule allows the admission of hearsay proofs, whatever their format and irrespective of their credibility traits, but restricts its dispositive use unless other nonhearsay evidence exists on the administrative record.[21] Adherence to the residuum rule requires

18. *See* Michael H. Graham, *The Case for Model Rules of Evidence in Administrative Adjudications*, 38 FED. B. NEWS & J. 189, 189 (1991) (arguing rules of evidence modeled after the Federal Rules of Evidence should apply in administrative adjudications).

19. *See* Hancock v. State Dep't of Revenue, Motor Vehicle Div., 758 P.2d 1372, 1377 (Colo. 1988) (noting reliable, trustworthy hearsay evidence can be used to establish an element in a driver's license revocation proceeding, although not reaching the issue because the appellant failed to raise a hearsay objection at the administrative hearing); Wright v. Department of Educ., Div. of Blind Servs., 523 So. 2d 681, 682 (Fla. Dist. Ct. App. 1988) (applying administrative evidence rule that permits hearsay evidence to supplement or explain other evidence, but that only permits hearsay evidence to support an administrative finding if it would be admissible under a hearsay exception in a civil action).

20. *See, e.g.*, Richardson v. Perales, 402 U.S. 389, 402, 407 (1971) (admitting hearsay evidence in the form of medical reports, but noting the absence of live testimony and cross-examination).

21. *See* Carroll v. Knickerbocker Ice Co., 113 N.E. 507, 509 (N.Y. 1916) (holding that, although hearsay evidence may be admitted in a workers' compensation hearing, "there must be a residuum of legal evidence to support the claim before an award can be made").

the reversal of an administrative finding if it is uniquely based on hearsay proofs.[22] The residuum rule is a clear over-reaction to the use of hearsay proofs. As applied, the residuum rule does not test the reliability of any given hearsay proof to sustain an administrative finding; rather, the residuum rule requires additional corroborative evidence to the hearsay to sustain an administrative finding.

Perhaps the residuum rule had its moorings in the acknowledgment that though the hearsay rule was thought too complex and inefficient for administrative law proceedings, the evils that the hearsay rule sought to mitigate, such as witness unreliability and insincerity, tested by the traditional safeguards of witness cross-examination, oath affirmation, or demeanor review, were similarly present in administrative proceedings.

The residuum rule was never intended to be an evidentiary rule of exclusion; instead, it was a rule to invite additional proofs having independent grounds of reliability. Proponents of the administrative law process sought comfort in suggesting total rejection of hearsay rule exclusion because of its complexities, while assuring themselves that dispositions would remain fair by relying on corroborative proofs.

The residuum rule is not a satisfactory substitute for the exclusion of all hearsay proofs. Instead, a liberal reading of the modern hearsay rule and its defined exceptions and exclusions would better satisfy credibility critics while preserving and promoting the idealism behind the administrative law process.

Though the residuum rule has been significantly criticized, the rule is followed in many state jurisdictions.[23] This is not the case, however, under federal administrative law. The United States Supreme Court in *Richardson v. Perales*[24] modified the residuum rule. This modification recognized the historic notion that certain hearsay declarations by virtue of the circumstances of their utterance have unique properties of reliability, and that because of their reliability, such hearsay proofs can be the basis of administrative decisions.

In *Richardson*, a party challenged the admissibility and dispositive use of physician reports offered by the government to defeat the merits of a social security disability claim. The government advanced these reports as dispositive proof of the non-meritorious claim. Although the proffered reports were hearsay by definition, the court affirmed the administrative law judge's admission and dispositive use of these reports. In so holding, the *Richardson* Court rejected the purity of the residuum rule and allowed the physician reports to be admitted based

22. *See* Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229-30 (1938) (noting NLRB board decisions must be supported by substantial evidence, and "[m]ere uncorroborated hearsay or rumor does not constitute substantial evidence").

23. *See* SCHWARTZ, *supra* note 17, § 7.4, at 377.

24. 402 U.S. 389 (1971).

on their common-law reliability and fairness. The *Richardson* Court noted that "courts have recognized the reliability and probative worth of written medical reports even in formal trials and, while acknowledging their hearsay character, have admitted them as an exception to the hearsay rule."[25]

The *Richardson* analysis parallels modern evidence rule use in contested proceedings. The residuum rule as practiced sought to achieve administrative awards based on substantial evidence. Given the development of the modern hearsay rule, this goal can readily be obtained by relying on modern evidence codes and their developed hearsay exceptions to admit dispositive proofs in contested agency matters.[26]

Administrative law tradition continues to reject technical compliance in applying the hearsay rule. This is due in large measure to the claim that hearsay rule application only disrupts the administrative process. Though modern courts continue to cite these normative framed restrictions, decisional trends in administrative law suggest a willingness to freely recognize hearsay rule application.[27] Their willingness to interject classic evidentiary theory, particularly the hearsay rule, into contested administrative proceedings bespeaks a desire to ensure institutional fairness of the proceeding. Courts that have reviewed these issues are convinced that the threshold principles of evidence reliability, as represented by the hearsay rule, constitute the core value of our judicial system.[28]

The hearsay rule of today is a necessary mechanism to test the threshold reliability of proffered evidence, regardless of the forum. To the extent that the administrative law process focuses on flexibility and fairness, select application of the hearsay rule promotes respect for this very process. All too often proponents of the administrative law process fail to recognize that the hearsay rule is not merely an evidence technicality, but is a fundamental principle that preserves

25. *Id.* at 405.

26. *See* Reynolds Metals Co. v. Industrial Comm'n, 402 P.2d 414, 418 (Ariz. 1965) (upholding an administrative decision based in part on evidence fitting the modern hearsay exceptions for statements describing an existing physical condition, statements to a physician, and medical records).

27. *See* Daniels v. Department of Motor Vehicles, 658 P.2d 1313 (Cal. 1983); Snelgrove v. Department of Motor Vehicles, 240 Cal. Rptr. 281 (Cal. Ct. App. 1987); State *ex rel.* Indep. Sch. Dist. No. 276 v. Department of Educ., 256 N.W.2d 619 (Minn. 1977).

28. *See* Colorado Dep't of Revenue, Motor Vehicle Div. v. Kirke, 743 P.2d 16, 22 (Colo. 1987) (noting hearsay evidence may support an administrative ruling "[a]s long as the hearsay is reliable and trustworthy and possesses probative value commonly accepted by reasonable and prudent persons"); Wright v. Department of Educ., Div. of Blind Servs., 523 So. 2d 681, 682 (Fla. Dist Ct. App. 1988) (holding reports fitting the business records exception could sufficiently support an administrative finding).

and protects adversarial due process: "The hearsay rule is not a technical rule of evidence, but a basic, vital and fundamental rule of law which ought to be followed by administrative agencies at those points in their hearings when facts crucial to the issue are sought to be placed upon the record."[29]

The hearsay rule articulates standards of relevance, credibility, and fairness, which the adversarial process demands regardless of the forum. Modern administrative law litigators acknowledge these principles and often invoke technical rules of evidence, hoping to direct the administrative law judge toward predetermined patterns of fairness.[30]

The hearsay rule began as the foremost technical symbol of evidence exclusion. The inherent unfairness in admitting hearsay declarations in the absence of cross-examination opportunities, oath administration, and demeanor review at time of declaration led to the common-law development of the modern hearsay rule. Today, cross-examination, oath, and demeanor review are the principal mechanisms to evaluate witness credibility, be it before the bench, jury, or in administrative proceedings.[31]

Administrative law proponents often argue that hearsay evidence is admissible with or without objection, and that such evidence may uniquely support an administrative decision.[32] This position is indistinguishable from general jurisdiction court practice. Courts of general jurisdiction have welcomed the admission of hearsay proofs, provided that such evidence has degrees of reliability either rooted in the common law or developed under modern code provisions.[33] The distinguishing factor is that the proponents of the administrative process suggest that hearsay evidence, per se, be admissible regardless of its circumstances of declaration. This is most problematic given the fact that the only limit to the admissibility of hearsay proofs in administrative law proceedings is that such proofs be relevant, material, and not unduly repetitive.[34] To merely admit, at will, hearsay proofs in an administrative proceeding, without requiring the proponents to

29. Bleilevens v. Commonwealth State Civil Serv. Comm'n, 312 A.2d 109, 111 (Pa. Commw. Ct. 1973).

30. *See* Whitlow v. Board of Med. Exam'rs, 56 Cal. Rptr. 525, 533 (Cal. Ct. App. 1967) (noting hearsay objections were raised at an administrative hearing, but upholding the hearing officer's decision that such objections went to the weight, not the admissibility, of the evidence).

31. *See* KENNETH S. BROUN ET AL., MCCORMICK ON EVIDENCE § 245 (Edward W. Cleary ed., 3d ed. 1984).

32. *See* Kenneth Culp Davis, *An Approach to Problems of Evidence in the Administrative Process*, 55 HARV. L. REV. 364, 374-76 (1942).

33. *See* Eleanor Swift, *The Hearsay Rule at Work: Has It Been Abolished De Facto by Judicial Decision?*, 76 MINN. L. REV. 473 (1992).

34. *See* Calhoun v. Bailar, 626 F.2d 145, 148 (9th Cir. 1980).

demonstrate the proofs' credibility, either by relying on a common-law rooted category of acceptance or offering independent foundation proofs of accuracy surrounding the circumstances of such declarations, calls into question the inherent sincerity of such a proceeding.[35]

The administrative debate over the use of technical evidence rules, particularly the hearsay rule, is overly expansive. Typically, these arguments do not distinguish between rule-making proceedings and informal adversarial adjudication.[36] The latter proceeding remains similar in scope to a general jurisdiction trial. Here, the purpose for such a hearing or trial is to resolve actual disputes regarding the rights of individuals or institutions. It is this forum of adversarial adjudication that best reflects the need for hearsay rule application, despite traditional claims to the contrary. Given that the hearsay rule provides the necessary challenge to problematic proofs, the importance of its role in preserving justice should not be singled out for unique application to general jurisdiction forums.

Administrative law traditionalists commonly argue that the application of the hearsay rule disrupts the administrative process by requiring inefficient evidence challenges. They often suggest that it takes longer to argue and resolve a request for an exclusionary ruling under the matrix of the hearsay rule than it does to listen to the evidence as initially presented.[37] All too often, administrative law judges are by necessity required to analyze and weigh problematic proofs. Though high-volume adjudication may invite the rejection of technical evidence law application, the conflict between efficiency aspirations and credibility reviews should not be compromised at the expense of legitimate evidence challenge.

The protections offered by the hearsay rule of exclusion best serve the administrative law process by preserving the age-old standards of reliability and relevance. Hearsay rule application could well preserve the desired efficiency of the administrative process. To invite the admission of all evidence regardless of its quality only delays the adjudicative process. Additionally, the mere admission of untested extrajudicial utterances only invites a disrespect for the process. The total rejection of the hearsay rule within the administrative law process does little toward ascertaining the truth and much to detract from a just result.

35. *See* Richardson v. Perales, 402 U.S. 389, 407-08 (1971) (noting hearsay evidence without rational probative force would be insufficient to alone support an administrative ruling, but permitting hearsay evidence in the form of medical reports to support an administrative ruling because of the reliability and credibility of such reports).

36. *See* Schwartz, *supra* note 17, §§ 4.3, 4.10, at 167-71, 189-92.

37. *See* Graham, *supra* note 18, at 190.

Proponents of the administrative law process should not reject modern hearsay rule revisions on the pretext that these proceedings are significantly different in structure from general jurisdiction trial practices. Administrative adjudications today are functionally equivalent to civil nonjury trials, which do apply the Federal Rules of Evidence. It necessarily follows that the codified Federal Rules, inclusive of the hearsay provisions, should apply to modern administrative adjudications: "The [rules of evidence] are logically applicable to the admission of evidence at an administrative adjudication, since it is now almost impossible to distinguish an administrative adjudication from a civil, non-jury trial . . . ."[38]

Administrative law traditionalists remain convinced that the hearsay rule, despite its modern reforms, is overly exclusive and detracts from the ascertainment of administrative truths. However, modern courts have noted the inherent risks to the administrative truth finding process when hearsay proofs are admitted without credibility foundation.[39]

Administrative litigators of today find it most difficult to predict evidence law case rulings without uniform codes of evidence. The Administrative Procedure Act provides the litigator with little or no guidance to proof offering other than standards of relevance and materiality. The administrative law process would best be served by adopting codes of evidence law similar to the Federal Rules of Evidence.[40]

Given that most administrative law courts and commentators accept the application of other technical rules of evidence, such as relevance, foundation, privilege, and character evidence rules, to exclude hearsay rule application alone remains a dubious practice. The application of the modern hearsay rule of today would aid the administrative law judge in decision-making responsibilities by excluding problematic proofs, thereby advancing the integrity of administrative decisions.

The administrative law process of today should no longer be encouraged to use an informal system when reviewing evidence offerings, while continuing to profess adherence to a good faith process. Given that administrative law judges might be perceived by the litigator as not having independent allegiance from their respective agencies, adherence to the hearsay rule might well preserve the independent integrity of the administrative process.

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38. *Id.*

39. *See Richardson*, 402 U.S. at 402, 407 (admitting hearsay evidence in the form of medical reports, but noting the absence of live testimony and cross-examination); *Calhoun*, 626 F.2d at 149 (holding hearsay could only constitute substantial evidence if it has "probative value and bear[s] indicia of reliability").

40. *See* Graham, *supra* note 18, at 189.

Like its general jurisdiction counterpart, administrative law courts have implicitly recognized the working exceptions and exclusions to the hearsay rule though they protest the opposite. Select categories of hearsay proofs are well documented within our court literature. Party admissions,[41] business records,[42] public records,[43] and statements to physicians[44] are all examples of current categorical exceptions or exclusions to the hearsay rule that administrative law courts have adopted to permit the admission of hearsay proofs while protecting the inherent integrity of the administrative law process.

III. CONCLUSION

The application of technical evidence law principles, including the hearsay rule, assures fairness of process within an administrative law hearing. Though it is well recognized that the hallmark of administrative proceedings is their alleged informality, by informality we ought not admit all hearsay evidence regardless of its reliability.

Given that the administrative law process is so entwined in our social and economic fabric, and its dispute resolution mechanisms so important, mandating technical evidence law application is required. Such evidence law application will assure significant uniformity among agency adjudication and provide an environment within which litigants will feel secure in the dispute process. The wide open APA standard of proof admission only invites the possibility of confusion and unfairness. The Federal Rules of Evidence model best provides a uniform application of evidence admission while preserving the notion of exclusion for challenged proofs, particularly those of suspect reliability.

The continued claim that the administrative law process is significantly different from that of courts of general jurisdiction, and therefore evidence law application should vary, continues to be a critical problem. The administrative application of technical evidence law admittedly increases the formality of the administrative process. Ad-

41. Similar to general jurisdiction decisions, party admissions are not considered hearsay evidence, and therefore remain admissible in either general jurisdiction or administrative tribunals, providing they are relevant, material, and are not overwhelmingly prejudicial. Party admissions are excluded from the category of hearsay on the theory that their admissibility into evidence is the result of the adversary system rather than satisfaction of any of the conditions arguably designed to satisfy credibility claims. *See* FED. R. EVID. 801(d)(2); John A. Strahorn, Jr., *A Reconsideration of the Hearsay Rule and Admissions* (pt. 2), 85 U. PA. L. REV. 564, 569-86 (1937).

42. *See* Snelgrove v. Department of Motor Vehicles, 240 Cal. Rptr. 281 (Cal. Ct. App. 1987).

43. *See* Juste v. Department of Health & Rehabilitative Servs., 520 So. 2d 69 (Fla. Dist. Ct. App. 1988).

44. *See* Richardson v. Perales, 402 U.S. 389, 402 (1971).

ministrative law traditionalists continue to object to such formalization and believe that such a change would challenge the administrative principles of dispatch and flexibility. However, such an observation is doubtful. By definition, an administrative law hearing is formal in that it is adversarial. Administrative hearings must contain the technical rules of evidence to assure credibility of offer and due process.

Adherence to past pronouncements, without review, only invites a process to continue without evaluation. While historic precedent is insightful, the law ought not to be blinded by mere adherence to precedent.

> It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.[45]

Proponents of the administrative law process must recognize that the technical application of evidence law principles assures fairness in the proceeding, while continuing in good faith to provide a viable alternative to general jurisdiction courts. The passage of years since the inception of the administrative law process has gradually seen institutional changes in the application of technical evidence law principles, particularly the hearsay rule.

The administrative law process of today is complex and all inclusive. Litigants ought to be protected from the admission of problematic proofs. A justice system which condones the opposite is worthy of significant criticism.

45. OLIVER WENDELL HOLMES, COLLECTED LEGAL PAPERS 187 (1920).