

Indiana University School of Law - Indianapolis
Administrative Law
Fall 2010
Professor Florence Wagman Roisman
Tuesday - 8:30-10:30 a.m./Thursday - 8:30 - 9:25 a.m.
Room 375

Final Syllabus

Required Texts:

- ▶ Walter Gellhorn, Clark Byse, Peter L. Strauss, Todd Rakoff, and Cynthia R. Farina, Gellhorn & Byse's Administrative Law: Cases and Comments (Foundation Press, 10th ed., 2003) ("G&B")
- ▶ G&B 2007 Supplement ("Supp.")
- ▶ Peter L. Strauss, ed., Administrative Law Stories (Foundation Press 2005) ("Stories")*

Please read or re-read these before classes begin so that you are generally familiar with them. Also, please carefully read or re-read the Constitution of the United States, which is at G&B p. 1303.

- ▶ William Strunk, Jr. & E.B. White, The Elements of Style (Allyn & Bacon 4th ed. 1999)
- ▶ Florence Wagman Roisman, Writing Memo (January 2010)
- ▶ **N.B. NO LAPTOPS MAY BE USED DURING CLASS****
Cell phones and pagers must be "off" during class. "Off" means off – not on "vibrate." No receipt or sending of text messages is allowed during class. Violation of these rules will result in exclusion from the class, temporarily or permanently. It is as disruptive to a class as it would be to a stage performance to have the flow of the event interrupted by extraneous noises, and your full attention should be on the class discussion.

Recommended Reference:

Richard J. Pierce, Administrative Law Treatise (Aspen 2009) (Three volume series) (On reserve in the Library.)

Useful Study Aids:

William F. Funk & Richard H. Seamon, Administrative Law (2009 Aspen).
Keith Werhan, Concise Hornbooks: Principles of Administrative Law (Thompson 2008).

*I haven't assigned all of the Stories, but am sure you would benefit enormously from reading all of them.

**Exceptions may be made for students with documented disabilities. See Student Services about this. I will make no exceptions other than those required by Student Services for students with documented disabilities.

Course Requirements:

These are the requirements for the course:

Preparation for, attendance at, and participation in class. Anyone who misses more than 5 hours of class may be involuntarily withdrawn from the course, at my discretion. Repeated lack of preparation (evidenced in person or in the reflections) may be treated as an absence, at my discretion. Involuntary withdrawal means that the student receives an “F” for the course, unless s/he successfully petitions the Student Affairs Committee to be allowed a “W” instead. In either event, the student must repeat the course.

Reflections:

By 4:00 p.m. on the Monday of each week, each student is to post on Oncourse a reflection discussing the materials assigned for that week (usually two classes). Your reflections should be uploaded in the Resources section of the Oncourse site for this course. There will be a folder for each week to which you should upload your reflection. If you have any questions about this please, contact technology staff, NOT me or Ms. Deer.

Please note: **the reflection is to be posted on Oncourse on Monday, by 4:00 p.m.** Each reflection is to indicate your understanding of each item assigned for the week. As should be obvious with a class this size, I will not read all the reflections. I will read some each week and probably others during the exam period. The reflections will be reviewed each week to be sure they are substantial and cover all the material.

With respect to cases, the reflection should show your understanding of the legal standards involved in the case and the bases for the decision(s) (majority and dissent, where relevant).

N.B. Administrative law is basically a constitutional law and statutory interpretation course. Every time there is a reference to a provision of the Constitution or a statute, you should be certain to read that provision. The Constitution and the APA are in appendices to the casebook, but you may find a pocket copy of the Constitution a handy thing to keep with you. You will need to have a copy of the Constitution with you in each class. Note that §552 of the APA was amended in 2007. The current version will be posted on Oncourse.

Often, we will be reading both old cases and newer cases that build on, and sometimes essentially reverse, the old. In these situations, you should read the old cases for background and focus your analytic consideration on the new cases. I’ve sometimes but not always indicated these varied emphases in the syllabus by denoting some cases as of historic importance [“HI.”]

Reflections will be graded on a 40 point scale – 10 for timeliness; 10 for writing technique; 10 for completeness (addressing all the assigned material); and 10 for thoughtful analysis of and reflection on the material. Each reflection is to be short – usually fewer than 10 pages.

Each reflection should be well-written, in standard English, using standard spelling,

punctuation, grammar, and diction. “Spell-check” and “Grammatik” devices on computers should be of great help; other sources are Strunk & White’s *The Elements of Style*, Fowler’s *Modern English Usage* and the “Writing Memo” I have prepared for you. Formal citations are not needed. Please spell-check and proofread each reflection. I do not want to be correcting things you can and should correct yourself.

Each reflection is due on Monday, the day before class, by 4:00 p.m. If the reflection is submitted after that, it is late for that day. Every additional day the reflection is late means the loss of more points – and timeliness points will be deducted from the other categories.

The goal of the reflections process, of course, is to assure that each of you is well-prepared for class. Timely, intelligent, well-written reflections could earn everyone a grade of “A.”

4. **There will be no final exam.** The final grade will be based primarily on the reflections, though I may give extra credit for class participation.

Office Hours: I generally am in my office (room 303). I try to do my own reading and writing in the mornings, and therefore prefer to see or hear from students in the afternoons, but you should feel free to contact me at any time in emergency situations. My phone number is 317-274-4479; my e-mail address is froisman@iupui.edu; my fax number is 317-278-3326. My office hours will be Tuesdays from 11:30 - 12:30 and Thursdays from 10:30 - 11:30 p.m. Barring emergencies, I will be in my office specifically for the purpose of seeing students at that times. I will be glad to make appointments to see students at those times. **Except for office hours, please do not call or visit my office in the mornings except in real emergencies.**

I welcome and encourage your comments, criticisms, and suggestions, which may be provided in person or in writing, anonymously or not. Administration Law is a subject I think vitally important; I want this to be an exciting, useful course for you, and seek your help in making it so.

Materials relevant to the course will be posted on Oncourse. You are responsible for checking Oncourse regularly.

If you have procedural questions, or questions about the availability of materials, please address them to Ms. Deer (274-1909; mdeer1@iupui.edu). If you are not sure whether to address a question to her or to me, please ask her first. She will tell you if it involves a matter about which I should be consulted. Technology questions should be addressed to the technical support staff, not to Ms. Deer or me.

<p>Class 1. Tues., Jan. 12</p> <p>Reflection 1 due.</p>	<p>Preface: G&B iii-vii</p> <p><input type="checkbox"/> N.B. § 552 of the APA was amended by the Open Government Act of 2007. The amended § 552 will be posted on Oncourse.</p> <p>I. An Introduction to Administrative Law</p> <p><input type="checkbox"/> G&B, pp. 1-34</p> <p>II. Agencies and the Structural Constitution</p> <p><input type="checkbox"/> G&B 35-83, 96-101 (Delegation in Europe)</p> <p><input type="checkbox"/> Supp. 1-5</p>
<p>Class 2. Thur., Jan. 14</p>	<p>Discussion continues.</p>
<p>Class 3. Tues., Jan. 19</p> <p>Reflection 2 due.</p>	<p><input type="checkbox"/> G&B 101-91 (Myers and Humphrey's Executor - HI)</p> <p><input type="checkbox"/> Supp. 5-9</p>
<p>Class 4. Thur., Jan. 21</p>	<p>Discussion continues.</p>
<p>Class 5. Tues., Jan. 26</p> <p>Reflection 3 due.</p>	<p><input type="checkbox"/> G&B 191-237 (Chadha, Clinton v. New York)</p> <p><input type="checkbox"/> Supp. 10-12</p> <p>III. Procedural Framework</p> <p><input type="checkbox"/> G&B 238-54, 263 note (b)-276</p> <p><input type="checkbox"/> Supp. 13-14</p>
<p>Class 6. Thur., Jan. 28</p>	<p>Discussion continues.</p>
<p>Class 7. Tues., Feb. 2</p> <p>Reflection 4 due.</p>	<p>Adjudication</p> <p><input type="checkbox"/> G&B 322-32 (omit notes 2 and 3 on 332), 333-78, 385-423</p> <p><input type="checkbox"/> Supp. 16-27</p>
<p>Class 8. Thur., Feb. 4</p>	<p>Discussion continues.</p>
<p>Class 9. Tues., Feb. 9</p> <p>Reflection 5 due.</p>	<p>Adjudication, concluded</p> <p><input type="checkbox"/> G&B 423-34, 443-71, 483-510</p> <p><input type="checkbox"/> Stories 124-67 (Gillian E. Metzger, <i>The Story of Vermont Yankee</i>)</p>
<p>Class 10. Thur., Feb. 11</p>	<p>Discussion continues.</p>

<p>Class 11. Tues., Feb. 16</p> <p>Reflection 6 due.</p>	<p>Rulemaking, continued</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 510-609 <input type="checkbox"/> Supp. 30-40
<p>Class 12. Thur., Feb. 18</p>	<p>Discussion continues.</p>
<p>Class 13. Tues., Feb. 23</p> <p>Reflection 7 due.</p>	<p>Rulemaking, concluded</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 609-46, 663-732 <input type="checkbox"/> Regulatory Review Memorandum from the President, 74 Fed. Reg. 5977 (Jan. 30, 2009) (On Oncourse) <input type="checkbox"/> Regulatory Review Memorandum from Rahm Emanuel, 74 Fed. Reg. 4435 (Jan. 26, 2009) (On Oncourse) <input type="checkbox"/> The Coal Ash Case, N.Y. Times, Jan. 20, 2010, A18 (On Oncourse) <input type="checkbox"/> Notices Office Management and Budget, Request for Comments 74 FR 8819-01, Feb. 26, 2009 (On Oncourse) <input type="checkbox"/> G&B [646-63]* <input type="checkbox"/> G&B 663-72 <input type="checkbox"/> Supp. 40-51, 122 (re: Presidential authority) <input type="checkbox"/> N.B. EO 13422 was revoked on Jan. 30, 2009, by E.O. 13497 (On Oncourse) <input type="checkbox"/> Hocror. v. U.S. Dept. of Agriculture, 82 F.3d 165 (7th Cir. 1996) (On Oncourse)
<p>Class 14. Thur., Feb. 25</p>	<p>Discussion continues.</p>

<p>Class 15. Tues., Mar. 2</p> <p>Reflection 8 due.</p>	<p>Freedom of Information Act</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 733-66 <input type="checkbox"/> Supp. 52-61 <input type="checkbox"/> Transparency and Open Government Memorandum from the President, 74 Fed. Reg. 4685 (Jan. 26, 2009) (On Oncourse) <input type="checkbox"/> ACLU v. Dept. of Defense, 543 F.3d 59 (2nd Cir. 2008), cert. granted and judgement vacated, 2009 WL 4110978 (2009) (On Oncourse) <input type="checkbox"/> Adam Liptak, Justices Void Order Requiring U.S. to Show Photos of Detainee Abuse, N.Y. Times, Dec. 1, 2009, A23 <input type="checkbox"/> Nina Bernstein, Officials Obscured Truth of Migrant Deaths in Jain: Evidence of Mistreatment Was Frequently Covered Up, Documents Show, N.Y. Times, Jan. 10, 2010, A1 <input type="checkbox"/> Secrets of the Immigration Jails, N.Y. Times, Jan. 20, 2010, A18 <input type="checkbox"/> Charles Savage & Scott Shane, Intelligence Was Improperly Collected on American Citizens, Documents Show, N.Y. Times, Dec, 17, 2009, A29 <input type="checkbox"/> Scott Shane, A.C.L.U. Lawyers Mine Documents for Truth About Detainees and Interrelations, N.Y. Times, Aug. 30, 2009, A4
<p>Class 16. Thur., Mar. 4</p>	<p>Procedural Due Process</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 767-69, [770-83]*, 783-823 <input type="checkbox"/> Supp. 62-63 <input type="checkbox"/> Jones v. Flowers, 547 U.S. 220 (2006) (On Oncourse)
<p>Class 17. Tues., Mar. 9</p> <p>Reflection 9 due.</p>	<p>Procedural Due Process, continued.</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 832-901 <input type="checkbox"/> Supp. 63-85 <input type="checkbox"/> Stories 228-57 (Cynthia R. Farina, Due Process at Rashomon Gate: The Story of [Mathews v. Eldridge])
<p>Class 18. Thur., Mar. 11</p>	<p>Discussion continues.</p>
<p>Mar. 15-19</p>	<p>Spring Break</p>

*Items in brackets are recommended to enhance your understanding, but are not required.

<p>Class 19. Tues., Mar. 23</p> <p>Reflection 10 due.</p>	<p>Judicial Review</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 902-03, [903-07], 907-15, 921-53, 978-1002 <input type="checkbox"/> Stories, 258-333 (Peter L. Strauss, [Citizens to Preserve—Of Politics and Law, Young Lawyers and the Highway Goliath])
<p>Class 20. Thurs., Mar. 25</p>	<p>Discussion continues.</p>
<p>Tues., Mar. 30</p>	<p>No Class - Passover</p> <p>Make up class will meet on Wednesday, April 21, 8:30 - 10:30 a.m., Room 375.</p>
<p>Class 21. Thurs., Apr. 1</p> <p>Reflection 11 due.</p>	<p>Judicial Review, continued</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 1002-26 (<i>State Farm</i>) <input type="checkbox"/> Supp. 86-88 <input type="checkbox"/> Stories, 334-430 (Jerry L. Mashaw, The Story of [Motor Vehicle Manufacturers Association of the U.S. v. State Farm Mutual Automobile Insurance Co.]: Law, Science and Politics in The Administrative State)
<p>Class 22. Tues., Apr. 6</p> <p>Reflection 12 due.</p>	<p>Judicial Review, continued</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 1026-51 (Chevron) <input type="checkbox"/> Supp. 88-96 <input type="checkbox"/> FCC v. Fox Television Stations, 129 S.Ct. 1800 (2009) (on Oncourse) <input type="checkbox"/> Entergy Corp. v. Riverkeeper, Inc., 129 S.Ct. 1498 (2009) (on Oncourse) <input type="checkbox"/> Julia Preston, Rule Changes For Workers On Farms, N.Y. Times, May 29, 2009, A25 (on Oncourse) <input type="checkbox"/> Federal Express v. Holowecki, 128 S.Ct. 1147 (2008) (on Oncourse) <input type="checkbox"/> Long Island Care at Home v. Coke, 551 U.S. 158 (2007) (on Oncourse)
<p>Class 23. Thurs., Apr. 8</p>	<p>Discussion continues.</p>
<p>Class 24., Tues., Apr. 13</p> <p>Reflection 13 due.</p>	<p>Judicial Review, continued</p> <ul style="list-style-type: none"> <input type="checkbox"/> G&B 1052-98 <input type="checkbox"/> Supp. 97-131

Class 25. Thur., Apr. 15	<input type="checkbox"/> G&B 1181-1228
Class 26. Wed., Apr. 21 Make up Class 8:30 - 10:30 a.m. Room 375 Reflection 14 due.	Judicial Review, concluded <input type="checkbox"/> G&B 1229-59 <input type="checkbox"/> Supp. 149-58 <input type="checkbox"/> Woodford v. Ngo, 458 U.S. 81 (2006) (on Oncourse) <input type="checkbox"/> Stories, 430-79 (Ronald M. Levin, [The Story of the Abbott Labs] Trilogy: The Seeds of the Ripeness Doctrine)