Administrative Law
(Law 116-002)

Office:  Hazel 322
Hours:  Wed., 4:00 – 5:30 or by appointment
E-mail:  jrabkin@gmu.edu

(all page numbers refer to this text; all other readings on TWEN)

I.  INTRODUCTION I

Jan 5:  Why do They Get to Decide?
“Agencies”:  1 – 9; 641-56 (FDA v. Brown & Williamson, skim);
734-43 (Mass v. EPA, skim);  970-72 (Sackett v. EPA or skim on TWEN)

Jan. 7:  What is ‘Administration’?
“Functions”:  10-25 (Dickinson, Fuchs; Londoner, Bi-Metallic, Yesler)
“Theories of Behavior”:  34 – 40 (esp. Landis, Bernstein, Noll, Wilson)
A.V. Dicey, Law of the Constitution (excerpt, TWEN)

Jan. 12:  Does Administration Transcend Separation of Powers?
“Concepts”:  41 - 59 (Landis, Strauss, Burns, McCutcheon)
“Rights & Remedies”:  810-16 (Cold Storage, Phillips)
“Tort Actions”:  942-45 (Little);  Ives v. South Buffalo Ry.  (TWEN);
American School of Magnetic Healing v. McAnnulty (TWEN)

II.  THE CONSTITUTIONAL SETTING OF FEDERAL ADMINISTRATION

Jan 14:  Agencies and Article I:  Before the New Deal and After
59 - 107 (Aurora, Wayman, Field, Hampton; Panama, Schechter, Mistretta, I.U.D)

Jan 21:  Controlling Delegation
108 – 140 (Am. Trucking, Chadha)
Jan 26: Agencies and Art. II
140 – 50, 159 – 216 (*Buckley, Morrison, Free Ent Fund*)
*Myers v. U.S.*, Opinions of Early Attorneys General (Excerpts, TWEN)

Jan 28: Art III and Separation of Powers h
217-55 (*CFTC, Stern, Withrow*)
*NLRB v. Jones & Laughlin Steel* (excerpt, TWEN)

III. CONSTITUTIONAL REQUIREMENTS AND DUE PROCESS

Feb 2: Earlier Views
803-10, 818 -33 (*Bailey, AntiFascist Com’tee, Cafeteria Workers*)

Feb 4: The Due Process Revolution
834 - 871 (*Goldberg, Bell, Roth, Sinderman, Thompson*)

Feb. 9: “Due Process of Law”
895-929 (*Mathews, Cleveland, Gilbert*)

Feb. 11: Constitutional Standing
989-1021 (*Lujan, Friends of Earth, Kansas City Power*)

IV. STATUTORY CONSTRAINTS: CONSTRUCTIONS OF THE APA

Feb. 16: The APA and Formal Rule-Making
256 - 88 (*Fla. East Coast Ry.*)
*Chicago, Milwaukee & St. Paul Rwy v. Minn* (excerpt, TWEN)

Feb. 18: Formal Adjudication
288-306 (*W. Chicago, Seacoast Anti-Pollution, Chem. Waste*)

Feb. 23: Informal Rule-making, I
306-49 (*Vt. Yankee, Conn. Light, Am Radio*)
Feb. 25: Informal Rule-making, II
359 – 97 (Air Transport, U.S. Tel, Prof’s & Patients, Am. Min’g)

Mar. 2: Informal Adjudication and Choice of RM or Adjudication
413 - 56 (Overton Park, Pension Benefit, Chenery I and II)

V. SCOPE OF REVIEW

Mar. 4: Review of Factual Findings
Informal Proceedings: 492 - 500 (ADPSO)

Mar. 16: Review of Legal Conclusions – Current Practice (i)
Some “History” and “Quiet Revolution”: 502 – 506; 527 – 51 (Gray, Skidmore, Chevron, Cardoza)

Mar. 18: Review of Legal Conclusions – Current Practice (ii)
“When Chevron Applies”: 551- 605 (Christopher, Rapaport, Christensen, Mead, Gonzalez)

Mar. 23: Review of Clear, Precise, Reasonable
“How Clear is Clear?”: 608 -56 (Zuni, Dole, Pauley, Brown& Williamson)

Mar. 25: Review of Discretion and Policymaking

Mar. 30: More on Review of Discretion and Policymaking
“Hard Look”: 763- 800 (Lemoyne, FLRA, Auto Safety, Matheson)

Apr. 1: Latest Developments
T.B.A.
VI. TIMING and AVAILABILITY OF JUDICIAL REVIEW

Apr. 6: Exclusion of Review
   “Whether”: 955 - 89 (Block, Bowen, Webster, Lincoln)

Apr. 8: Standing
   “Whom ... Statutory Standing”: 1024 - 52 (Data Processing, Clarke, Air Courier, National Credit)

Apr. 13: Ripeness
   “When”: 1069- 1106 (Standard, Air Brake, Abbott, Toilet Goods, Ohio Forestry)

Apr. 15: Review and Conclusion