

Administrative Law 116 (002), Autumn 2024

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Sketch of the course and learning outcomes: In this course, you will not learn everything you need to know about administrative law. You will learn (or at least have a reasonable opportunity to learn) enough to get started and then continue to learn through higher-level coursework, independent study, and practical application. That is the purpose of the course – to get you rolling toward expertise in:

- (1) the roots and structure of administrative law;
- (2) current administrative law doctrine and procedure;
- (3) spotting and dealing with issues involving administrative law; and
- (4) generally thinking and acting like a lawyer – critically, constructively, creatively, civilly, ethically, and articulately.

In the classroom, you will engage mostly in two activities: occasionally speaking during discussions of the assigned reading, and often giving other speakers your undivided attention while working, in your own mind, on the same challenges they are working on out loud. Those in-class activities should inspire you to engage in some outside activities, including reading, outlining, thinking about, and discussing the assigned reading, creating and taking your own practice questions in anticipation of the final exam, and so on. We should, by the way, have some fun as well.

Class sessions and calendars: We will meet on Tuesdays and Thursdays in person, and all class sessions (including office hours) will be recorded and posted on Blackboard. Our law school's website says class runs from 6:05 p.m. to 7:30 p.m., but on Tuesdays (not Thursdays) we will go to 7:45 p.m. Why? Because on rare occasions it is necessary to cancel a class session. For example, this semester, we will not meet on Tuesday, August 27. Experience teaches that it is good to avoid make-up sessions, which must be held (due to people's busy schedules) early in the morning, late at night, or on a weekend. By banking a few minutes at the end of some class sessions we can avoid such inconvenient make-up sessions. If we do not use all the banked minutes, I will simply cancel our last class session. Good nutrition is an important part of a good education, so, you are free to dine during class (and during office hours), so long as you are quiet about it and clean up after yourself.

Office hours: They will be right after each Thursday class session, in our classroom. Attendance at office hours is really, truly optional. I will simply stay after the class session formally ends and chat with anyone who hangs around until we run out of topics or I run out of time. I will not take attendance and will not reward people for attending. It is merely a time for you to have access to me, if you want it. You won't hurt my feelings by not coming. Nor will I be offended if you wander in and out, or show up for a few minutes and leave, or come late, or don't show up in August, September, and October, but do show up in December. It's all good. Also, the agenda is loose. We can talk about administrative law, and we can talk about other topics – life, the universe, and everything else appropriate – if you like. There are several reasons for conducting office hours this way. Here are a few of the more important ones. First, it preserves a level playing field. No one gets special access to the instructor. Second, it improves the quality of answers to questions, because it is not at all uncommon for students to come up with first-rate answers to office hours questions. Yes, office hours are conversations, not just student-instructor Q&A ping-pong matches. Third, it enables people who are reluctant to speak up (at least at the start) to be a part of office hours. It's perfectly fine to attend office hours and simply listen. Remember: The most useful function of office hours is the challenge of formulating good questions. You don't even need to ask them if you decide not to. Second most useful is participating in developing good answers. Of course, if you need to talk with me about something that is not appropriate for office hours (a personal issue or an ethical concern, or the like), feel free to make an appointment. Finally and very importantly, if you have a concern that you are not comfortable raising with me, you should raise it with Annamaria Nields (anields@gmu.edu), the impressively knowledgeable, wise, kind, and resourceful Associate Dean for Student Affairs and Academic Support at our law school. I have worked with Dean Nields for many years and have the highest respect for and trust in her.

Disability accommodations: Disability Services at George Mason University is committed to upholding the letter and spirit of the laws that ensure equal treatment of people with disabilities. Under the administration of University Life, Disability Services implements and coordinates reasonable accommodations and disability-related services that afford equal access to university programs and activities. Students can begin the registration process with Disability Services at any time during their enrollment at George Mason University. If you are seeking accommodations, please visit <http://ds.gmu.edu/> for detailed information about the Disability Services registration process.

For each class session:

- Read, take notes, and think about the assigned material before class, and be prepared to listen and speak. Stay an assignment or two ahead of schedule, just in case. But don't overdo it. There are other things in life, some of which are even more important than this course!
- Look up words you do not know. Use a good dictionary or two (including a recent edition of *Black's Law Dictionary*, edited by Bryan Garner). Important, interesting, or odd words are good candidates for exam questions.
- You may use silent electronics in class. But bear in mind a few points: (1) there is some evidence that pointing your face toward a speaker (or at least turning in their direction a bit) improves your comprehension and recollection of what the speaker says, whether it's an in-person interaction or online; (2) the instructor believes the first point is true, believes that even if it isn't true it is still polite, believes that politeness is part of good lawyering, and knows beyond a shadow of a doubt that behaving as though you are trying to model good lawyerly behavior factors in the calculation of participation adjustments in grading for this course; and (3) finally and ironically, there is some evidence of an inverse relationship between a person's belief that they can multitask and their ability to multitask.

- Take notes in your own words. There is some evidence that taking notes that way (rather than merely transcribing what is said in class) improves your comprehension and recollection of what you hear and see (which might come in handy for the exam). Besides, if you are worried about catching every word during class, don't. All class sessions and office hours will be recorded and posted online.
- Note and follow in-class instruction. If you miss a class (or miss something said in a class you do attend) get notes from a classmate. Make arrangements in advance as a precaution against unanticipated absences (and missed somethings). There is a strong tradition in law of sharing notes with colleagues in need. Be a part of it.

Texts:

Required: Casebook: Hickman, Pierce & Walker, Federal Administrative Law (4th ed. 2023).

Suggested: Dictionary: Bryan A. Garner, Black's Law Dictionary (12th ed. 2024) (not cheap, but worth it).

A few words about law school textbooks: They go out of date fast, because the law is a living, constantly changing creature, like the society of which it is a part. So, do not be surprised if we do some tinkering during our course, and be on the watch for changes in law throughout your career. In fact, the authors of our Casebook have already announced they will soon issue an update (some or all of which we will read) to account for decisions issued by the U.S. Supreme Court earlier this year (thus the October "tbd" entries in the assignment schedule).

Assignments and class schedule:

Entries to the right of a date indicate the reading assignments for that date. Expect occasional and not-burdensome adjustments. Assignments are subject to change based on the pace of the course and the whim of the instructor.

Date	Topic(s)	Casebook reading
Aug. 22 & 29	The Origins of the Administrative State; and Congressional Power, Part 1: Delegating Legislation	1-133, 460-464
Sept. 3 & 5	Congressional Power, Part 2: Delegating Adjudication; and Part 3: Specialty Delegations	133-205
Sept. 10 & 12	Presidential Power, Part 1: Hiring	207-284
Sept. 17 & 19	Presidential Power, Part 2: Firing; and Part 3: Specialty Supervision	284-381
Sept. 24 & 26	Agency Power, Part 1: Adjudication	383-469
Oct. 1 & 3	Agency Power, Part 1 (continued): More Adjudication	469-535
Oct. 8 & 10	Agency Power, Part 2: Rulemaking	537-634
Oct. 15 & 17	Agency Power, Part 2 (continued): More Rulemaking	634-720
Oct. 22 & 24	Judicial Power, Part 1: Statutory Interpretation	tbd
Oct. 29 & 31	Judicial Power, Part 1 (continued): More Statutory Interpretation	tbd
Nov. 7	review	none
Nov. 12 & 14	Judicial Power, Part 2: Who Can Get Review of What, and When?	967-1099
Nov. 19 & 22	Judicial Power, Part 2 (continued): More Who Can Get Review of What, and When?	1099-1185
tbd	Q&A session #1	none
tbd	Q&A session #2	none
Dec. 12	final exam	none

Class sessions: The basic structure of each class session will be as outlined below. The actual times for each element of a class are likely to vary a bit from day to day, and they are subject to the same "pace of the course" and "whim of the instructor" flexibilities as everything else in the course. The first day of class will definitely be a bit looser.

6:05 p.m.: **Opening remarks:** Instructor makes announcements (including who will be on the panel for the next class session) and deals with administrative matters.

6:10 p.m.: **Panel discussion:** The instructor interviews a panel of students (usually four or five) about the assigned readings and their implications.

6:40 p.m.: Break.

6:50 p.m.: **Q&A:** The instructor asks and answers questions. Some of these will be short cold-call interactions – partly, of course, to inspire you to do the reading and think about it, but also (and more importantly, really) to give you practice expressing your knowledge (and sometimes even your opinions) briefly, coherently, and out loud. Our class is big, but even so you should expect to be called on every couple of weeks or so. Some of the questions asked and answers given during this part of class will be based on questions that will be on the final exam.

7:30 p.m.: Class ends (7:45 p.m. on Tuesdays).

After class: **Office hours on Thursdays:** Optional conversation. This part is explained in detail above.

Grades: Your grade will be based on two things – a final exam and class participation. Final exam: The exam will be 100% of your grade, unless you earn an adjustment up or down for class participation. The exam will cover the assigned reading and the instructor’s remarks in class. It will be a three-hour multiple-choice test consisting of 40 to 50 questions. It will be as open-book as our school’s exam regulations permit, with one exception: No matter what the regulations say, you must not interact in any way (in person, in writing, by signing, electronically, telepathically, etc.) with any human being during the exam (except, of course, for the fine people in our law school’s Records Office and IT Department, since you may need their help with administrative and technical aspects of the exam). Class participation: When determining your grade in the course, the instructor may apply a single-increment adjustment to the exam grade, upward or downward (for example, from B to B+ or from A- to B+), based on class participation (which includes overall good citizenship) in the course. The easiest ways to improve your chances of an upward adjustment are: (1) when the instructor invites you to speak in class, demonstrate that you have done the assigned reading and thought about it and were paying attention to what was going on in the classroom just before the instructor invited you to speak (yes, you can pass on a question, but that won’t help you pass the course); (2) make your replies to the instructor and your comments on contributions of classmates short, on-point, and constructive, and pay attention to others’ answers and comments (yes, politeness can affect your grades in law school as well as your career after it); and (3) attend class (yes, a school regulation says, “[i]f a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course” and a “student who is not present for at least 75 percent of a session of the course is absent from that session,” but those are merely definitions of the lower bounds of certain minimal performances, and minimal performances merit minimal grades). One more tip about participation: Asking the instructor a question that is answered in this syllabus is evidence that you are either not doing the reading or not paying attention.

Academic regulations: They are here: www.law.gmu.edu/academics/regulations. If you have not read them yet, you should, because you are responsible for complying with them!

Intellectual property: The instructor owns all course content, regardless of form. You may share copies of that content with classmates during the course, but other than that you must keep all of it in any format to yourself forever. Copyright 2024 Ross E. Davies.