

**Administrative Law
Law 6400 – Section 12
Spring 2024**

SYLLABUS

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Office Hours: Tuesdays and Wednesdays, 3-4 pm

Class Schedule: Tuesdays, Wednesdays, and Thursdays, 1:40 - 2:35 p.m. Classes will begin promptly at the appointed time.

Required Texts: 1. Hickman, Pierce & Walker, *Federal Administrative Law* (4th ed.)
2. Supplementary Materials (available on my website)

You should bring your casebook to class every day. I frequently refer to material in the casebook by page number. These references are easier to follow if you have your casebook with you.

Assignments: An initial list of reading assignments is attached. You should read each assignment before the class in which the assigned material is discussed, think carefully about the reading, and be prepared to participate in class discussion. The assignment numbers correspond roughly to class periods, but the precise assignment for each class will be announced during the previous class or by email. If at the end of any class we have made substantial progress on the materials so far assigned and no announcement is made, read the next assignment. For the first class, read assignments 0 and 1 (that's "1", not "I").

Requirements: The requirements for all students are: read the assignments in a timely fashion, attend class, participate in class discussion, and take the final exam. Grades will be based primarily on the exam, with class participation also considered.

Class Participation: Students will be called on at random during class within the context of a system that will give everyone one day a week off from being called on. Volunteer participation is also encouraged.

Please participate in class discussion civilly and respectfully. The study of law involves many controversial issues on which people have widely varying opinions. The materials in this course lend themselves to differing opinions depending on one's ideological point of view. Students of differing legal,

political, and ideological views should all feel welcome to participate in our class discussions. Students are free to disagree with me or with other students and to express that disagreement in class but should always do so in a civil and respectful manner.

Communication: I frequently send important messages relating to the course to students by email. This will likely occur before the first day of class. Students are responsible for checking their official GW email accounts (the one with an address ending in @law.gwu.edu) daily throughout the term.

Examinations: The exam will be open book. The exam may contain a mixture of essay and multiple choice questions. Further details will be provided before the exam.

Students are strongly encouraged to use computers to type their exam answers. Students who choose to handwrite their exam answers are cautioned that words that are not readily legible may be disregarded. Students who require an exception to this rule for a legitimate reason (e.g., disability) should discuss the matter with the University's Office of Disability Support Services (see below) and/or the Law School's Dean of Students Office well in advance of the exam. Please do not discuss this issue with me directly as doing so could interfere with the anonymity of the exam process.

Names & Pronouns: I generally use first names when calling on students. I will invite students to let me know the name by which they wish to be called in advance of the first class. If a student submits no preferred name, I will use the student's official, registered first name. Students who wish to inform me of their pronouns may do so at the same time.

Disabilities: Students who may need an accommodation based on the potential impact of a disability should contact the Office of Disability Support Services (DSS) at 202-994-8250 (Rome Hall, Suite 102), to establish eligibility. Once a student is registered and deemed eligible for accommodation, the student should contact the Dean of Students Office at 202-994-8320 to coordinate reasonable accommodations (e.g., note-taking assistance, adaptive technologies, etc.).

Learning Outcomes: A student who completes this course should have knowledge and understanding of the workings of U.S. federal administrative agencies. Students should understand how such agencies fit into the constitutional structure of the United States government; the procedures by which such agencies carry out their basic functions, particularly rulemaking and adjudication; and the procedures governing judicial review of agency action.

Taping of classes: All classes will be taped. The tapes will be posted and available for all students.

Attendance: Even though all classes are taped, attendance is mandatory. Watching the tape of a class does not excuse failure to attend class. Students who are persistently and excessively absent will not receive a positive class participation adjustment and may receive a negative class participation adjustment or a grade of No Credit. Occasional, isolated absences do not directly affect a student's grade, and students need not seek permission for such absences.

Students must sit in their assigned seats when present in in-person classes. Students who fail to sit in their assigned seats may be deemed absent.

Devices: Students must make sure that their cell phones, computers, and any other devices they may have do not make any noise that could interrupt the class. The "vibrate" setting is permitted. Computers that make noise on start-up should not be started once class has begun. Students whose devices violate this rule may be asked to leave the classroom.

The use of devices in class to take notes is permitted. Students should bear in mind that some studies suggest that taking notes by hand promotes better learning, although other studies have called these results into question. See Susan Dynarski, *Laptops Are Great. But Not During a Lecture or a Meeting*, N.Y. Times, Nov. 22, 2017. But see *Don't Ditch the Laptop Just Yet: Replication Finds No Immediate Advantage to Writing Notes by Hand*, available at www.psychologicalscience.org/observer/writing-notes. Devices may also be used to access the course materials.

The use of devices during class for purposes other than taking notes or accessing the course materials, such as playing games, surfing the Internet, or reading or sending messages, is distracting to other students and is therefore prohibited. Students who use devices during class are on their honor to comply with this rule.

The use of electronic means to transmit answers to students being asked questions during class is prohibited. Violation of this rule constitutes academic dishonesty.

Distancing: The COVID pandemic called attention to the role of proximity in spreading illness. If you ever need to tell me that you are sick (regardless of what you are sick with), please do not walk up close to me to tell me. Email me or tell me from 6 feet away.

READING ASSIGNMENTS -- Part 1

Abbreviations used below:

HPW Hickman, Pierce & Walker, *Federal Administrative Law* (4th ed.)
SM Supplementary Materials
APA Administrative Procedure Act (see HPW App. B)

I. Introduction And Overview

0. Background

Read this syllabus, particularly the introductory material that precedes the reading assignments. The syllabus contains important information that you are responsible for knowing. Failure to comply with the course rules and requirements stated in the syllabus may result in grade penalties or a grade of No Credit.

It will be assumed many times during the course that you are familiar with the Constitution of the United States. Your knowledge from Constitutional Law should be sufficient. If you have not looked at the Constitution in a while, however, you might wish to refresh your memory of it, particularly the following:

Article I, §§ 1, 6, 7, and 8
Article II, § 1, cl. 1
Article II, §§ 2, 3, and 4
Article III, §§ 1 and 2
Amendments V, X
Amendment XIV, § 1

1. SM 1-7

II. What Are Administrative Agencies—And Who Controls Them?

A. Congress and the Administrative Agencies

Nondelegation Doctrine

2. HPW 29-44, with these additional inserts:
 - After reading HPW 40, insert the paragraph on SM 8 before continuing.
 - After *Schechter Poultry*, read the notes on SM 8-9 before the notes in the Casebook.
3. HPW 58-63, 68-85 (1st ¶), with these additional inserts:
 - When reading HPW 58 and 59, insert the excerpts from SM 10 and 11

Statutory Precision

4. HPW 126-133, with these additional inserts:
 - Just before starting *US. v. Murry*, p. 127, read the corresponding material on SM 12
 - When at the ellipsis in the middle of p. 132, read the corresponding material from SM 12
 - After finishing p. 132, read the “Notes and Questions on SM 13 before reading HPW 133

Delegation of “Judicial” Power

5. HPW 133-141
SM 14-28
6. HPW 150-168

Congressional Control Techniques

7. HPW 168-184
SM 29-36 (up to horizontal line)
APA, 5 U.S.C. §§ 551-706. Skim this, but read the following carefully:
 - § 551(1), (4)-(7), (13)
 - § 553(b), (c)
 - § 554(a), (c)
 - § 702
 - § 706SM 36 (after horizontal line)
8. HPW 184 (last ¶) - 205, plus the following inserts:
 - p. 191, at the ellipsis just after heading IV – insert from SM 37
 - p. 192, Justice Powell’s omitted opinion – insert from SM 37
 - p. 193, at the end of the excerpt from Justice White’s opinion – insert from SM 37-38

Presidential Control of Administrative Agencies – Appointments

9. HPW 207 - 208 (first two lines), 211 (heading A) - 230
U.S. Const., art. II, §§ 2, 3, 4
10. HPW 230-243, 270-280
11. HPW 243-270

Presidential Control of Administrative Agencies – Removal

12. HPW 280-289 (up to the ellipsis near the bottom of the page)
HPW 295-306

13. HPW 306-341 (1st ¶)

Presidential Control of Administrative Agencies – The Directive Power

14. SM 39-41
HPW 341-357
HPW 357-370 (skim, note the description of this EO and its predecessors on pp. 356-357)
HPW 370-373, 379-381