

THE UNIVERSITY OF GEORGIA

PUBLIC ADMINISTRATION 6490: ADMINISTRATIVE LAW

**FALL SEMESTER 2019
MONDAY EVENINGS, 6:50 P.M. – 9:50 P.M.
BALDWIN HALL, ROOM 101-D**

SYLLABUS

COURSE DESCRIPTION

This course examines the legal principles and practical doctrines involved in the work of administrative agencies vested with quasi-legislative and/or quasi-judicial powers.

COURSE OBJECTIVES

This course is designed to help students:

1. Explain the development of administrative law and why it is important for public managers;
2. Define the concepts of the Administrative Procedure Act (APA), the delegation doctrine, and their influence on the administrative state;
3. Analyze the constitutional guarantees of due process and equal protection of the law;
4. Grasp how discretion and informal actions are crucial to the administrative process and how balancing the rule of law and administrative discretion is a central theme of administrative law;
5. Comprehend the limits that the Constitution and statutes place on the investigative powers of administrative agencies;
6. Appreciate citizen rights in dealing with administrative agencies;
7. Understand how agencies act like legislatures through the rulemaking process and how they promulgate rules;
8. Recognize that agencies act like courts in the formal adjudication process and understand how the adjudication process is governed by the Constitution, statutes, and rules;

9. Explain how courts play an essential role in legitimizing the administrative process through review of administrative actions; and

INSTRUCTOR

James Michael “Mike” Martinez

Part-time instructor

Website: <http://www.jmichaelmartinez.com/>

Telephone: (770) 207-8890

Cell phone: (770) 630-8096

Fax: (770) 207-8897

E-Mail: Mike.Martinez-CorporateCounsel@dart.biz or jmikemar@uga.edu

Office Hours: Upon request and by prior appointment.

Because I am seldom on campus during the day, the telephone and fax numbers listed are for my home-office. Feel free to call between 8:00 a.m. and 11:00 p.m. (or send me an e-mail message at any time). If I am unavailable when you call, leave a voice message (including a telephone number with an area code) and I will return your call as soon as I can.

REQUIRED TEXTS

Two texts are required.

Rosenbloom, David H. *Administrative Law for Public Managers*. Second Edition. Boulder, CO: Westview Press, 2015. ISBN-13: 978-0813348810; ISBN-10: 08133488-11.

Werhan, Keith. *Principles of Administrative Law*. Third Edition. St. Paul, MN: West Academic Publishing, 2019. ISBN: 9781640201811.

A Note from West Academic Publishing: I am happy to offer all of your students a 15% discount and free ground shipping off of the print edition if they create an account and place an order directly through us at www.westacademic.com They will receive this discount by using the promo code: **HESTUDENT**

Additional readings are available to students via e-Learning Commons or via a web link:

Abbott Laboratories v. Gardner, 387 U.S. 136 (1967).

Bertelli, A.M., and Lynn, L.E. Jr. 2006. “Public Management in the Shadow of the Constitution.” *Administration & Society* 38(1): 31-57.

Bi-Metallic Investment v. State Board of Equalization of Colorado, 239 U.S. 441 (1915).

Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972).

Bureau of International Information Programs. 2004. *Outline of the U.S. Legal System*. Washington, D.C.: U.S. Department of State.

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971).

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

Feldman, D.L. 2015. "The Legitimacy of U.S. Government Agency Power." *Public Administration Review* 75(1): 75-84.

Goldberg v. Kelly, 397 U.S. 254 (1970).

Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983).

Londoner v. City and County of Denver, 210 U.S. 373 (1908).

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

Luhan v. National Wildlife Federation, 497 U.S. 871 (1990).

Lynn, L.E., Jr. 2009. "Restoring the Rule of Law to Public Administration: What Frank Goodnow Got Right and Leonard White Didn't." *Public Administration Review* 69(5): 803-12.

Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007).

Mathews v. Eldridge, 424 U.S. 319 (1976).

Mashaw, J.L. 1996. "Reinventing Government and Regulatory Reform: Studies in the Neglect and Abuse of Administrative Law." *University of Pittsburg Law Review* 57(2): 405-22.

Mistretta v. United States, 488 U.S. 361 (1989).

Moe, R.C., and Gilmour, R.S. 1995. "Rediscovering Principles of Public Administration: The Neglected Foundations of Public Law." *Public Administration Review* 55(2): 135-46.

Motor Vehicles Manufacturer's Association v. State Farm, 463 U.S. 29 (1983).

Munn v. Illinois, 94 U.S. 113 (1877).

National Labor Relations Board v. Bell Aerospace Company, 416 U.S. 267 (1974).

Nelson, M. 1982. "A Short, Ironic History of American Bureaucracy." *The Journal of Politics* 44(3): 747-78.

Perry v. Sindermann, 408 U.S. 593 (1972).

Rosenbloom, D.H., and Piotrowski, S.J. 2005. "Reinventing Public Administration While 'De-Inventing' Administrative Law: Is It Time for an 'APA' for Regulating Outsourced Government Work?" *Syracuse Journal of International Law and Commerce* 33(1): 175-189.

Securities & Exchange Commission v. Chenery Corporation, 332 U.S. 194 (1947).

Sierra Club v. Morton, 405 U.S. 727 (1972).

United States v. Mead Corporation, 533 U.S. 218 (2001).

United States v. SCRAP, 412 U.S. 669 (1973).

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978).

Yackee, S.W. 2006. "Sweet-talking the Fourth Branch: The Influence of Interest Group Comments on Federal Agency Rulemaking." *Journal of Public Administration Research & Theory* 16(1): 103-124.

Yackee, J.W., and Yackee, S.W. 2009. "Divided Government and U.S. Federal Rulemaking." *Regulation & Governance* 3(2): 128-144.

GRADING POLICIES & PROCEDURES

Class grades are calculated based on a student's performance on three types of assignments.

(1) **Case Briefs:** Each student must submit eight (8) case briefs on major administrative law cases discussed throughout the semester. A case brief contains the following six elements:

- (a) Case name and citation;
- (b) Facts (identification of the parties, what happened factually and procedurally, and the judgment);
- (c) Issues (what is in dispute);
- (d) Holding (the applied rule of law);
- (e) Rationale (reasons for the holding); and
- (f) The significance of the case for administrative law (i.e., why are we discussing it in this class?)

(2) Each student will make two (2) in-class presentations. The **first presentation**, which should last 10-15 minutes, will be an overview of a major administrative law case. I will distribute a sign-up sheet during the second class session. The **second presentation** requires each student to discuss his/her research paper topic in class on November 18 and November 25 (and the discussion may extend into the December 2 class, if necessary). The in-class presentation will last 15-20 minutes and can include PowerPoint slides, although visual materials are not required.

(3) Each student will write a research paper, which is due on November 25.

Points are allocated according to this percentage breakdown:

Assignments	Percentage of Final Grade
8 case briefs	5% each (40% Total)
2 in-class presentations	10% each (20% Total)
Research paper	40%

RESEARCH PAPER

The research paper assignment will require students to research and write on a topic of their choice regarding some aspect of administrative law. As we will discuss throughout the semester, administrative law sometimes is controversial because it involves a delegation of authority from elected officials to unelected officials. Moreover, administrative law judges make quasi-judicial decisions even though they are not part of the judicial branch. The purpose of the research paper assignment is for students to explore these types of contentious issues and thereby achieve a deeper understanding of public policy in the field of administrative law. The research paper should be 10-15 pages in length for master's students and 15-20 pages in length for doctoral students (not including prefatory matter and a list of references). The paper should follow a standard citation format for all secondary materials.

A one-paragraph description of the paper topic is due at the start of class on Monday, November 4, 2019. Final papers are due on Monday, November 25, 2019.

A good graduate level-level research paper consists of several parts. Writers refer to the appropriate formula as: Tell me what you are going to tell me; tell me; and tell me that you told me.

Tell me what you are going to tell me: In the first few paragraphs, the author must introduce the reader to the topic. What is this paper about and how does the author plan to prove his or her point? In other words, what does the author hope to accomplish in the paper? This is what English teachers call the "thesis." A good paper must begin with a clear statement of the thesis. If the thesis is that the death penalty constitutes cruel and unusual punishment and violates the Eighth Amendment, the author must explain the debates over interpretation of the Eighth Amendment, introduce the reader to the concept of "cruel and unusual punishment," and discuss why one the author's perspective on the issue is superior to other interpretations. This process of "setting up the problem" should be accomplished near the beginning of the paper.

Tell me: Next, the paper must set forth an argument and lead the reader through the argument, building one point on another so that the arguments and evidence are cumulative and persuasive. Whereas the introduction summarized the argument, this section fleshes it out, providing the detail that was only hinted at in the introduction. The author would be well-advised to apply concepts discussed in class, as appropriate. The use of examples is especially helpful in illustrating salient points.

Tell me that you told me: Finally, the paper must include a conclusion that does more than restate the thesis. If the assignment asks the author to state an opinion and defend it, the author should do so in more than a mere perfunctory fashion. He or she must demonstrate a clear understanding of the issue and an ability to use concepts discussed in class to develop arguments. The conclusion also must bring together the disparate points discussed in the paper.

Grammar & Mechanics: A good research paper should adhere to the normal rules of English grammar, syntax, punctuation, and so forth. Numerous style manuals are available. Any well-recognized manual (e.g., The Chicago Manual of Style, the APA guide, etc.) will suffice.

Originality: A good research paper is written in the author's own words and relies on very few direct quotations. It is preferable to present your own ideas and sentences, even if they need improvement, rather than present paraphrased material you gleaned from secondary sources. In addition, the examples the author uses should be original and demonstrate a mastery of the material used in the assignment and the concepts discussed in the course.

Research: "A" papers always cite and discuss the relevant literature and cases in support of an argument. It is easy to "get lost in the research"; that is, a student is tempted to simply throw in a great deal of information and facts amassed in the research. The thinking is, "hey, if I went to the trouble of gathering all this material, I should throw it in there." This kind of thinking is almost always a mistake. You should not bore or confuse the reader with extraneous or irrelevant information. You should use sources and cases that best illustrate your point, but don't go off on a tangent. Two or three well-argued points supported by a handful of cases are preferable to ten poorly-developed points backed up by cases that don't pertain to the subject.

CLASS ATTENDANCE & ACADEMIC INTEGRITY

Students are encouraged to attend classes in accordance with policies and procedures of the university. A strong correlation exists between class attendance and high achievement.

Wilson Mizner once observed that "to copy from one is plagiarism, but to copy from two is research." The University of Georgia does not share Mizner's permissive attitude on plagiarism. Accordingly, every student is responsible for upholding the provisions of the student code of conduct, which addresses the university's policy on academic honesty, including provisions regarding plagiarism and cheating, unauthorized access to university materials, misrepresentation/falsification of university records or academic work, malicious removal, retention, or destruction of library materials, malicious/intentional misuse of computer facilities and/or services, and misuse of student identification cards. Incidents of alleged academic misconduct will be handled through the established procedures of the university judicial

program, which include either an “informal” resolution by a faculty member, resulting in a grade adjustment, or a formal hearing procedure.

e-LEARNING COMMONS

The Department of Public Administration & Policy uses eLearning Commons to provide supporting materials for PADP courses. Accordingly, eLearning Commons will display the syllabus, supplemental readings and materials, copies of PowerPoint slides, and important announcements, including procedures to be followed in the event of inclement weather, university closings, and/or the instructor’s illness. All students should check eLearning Commons frequently to ensure that they are informed of course requirements and milestones.

ASSIGNMENTS

Topic	Readings & Assignments
<u>Monday, August 19:</u> Introduction to the Course, Part I: Key terms—law versus ethics; rules and principles; types of law; political questions and legal questions.	Syllabus review; introduction to the course (no readings).
<u>Monday, August 26:</u> Introduction to the Course, Part II: The Constitutional and Historical Context.	Bureau of International Information Programs, <i>Outline of the U.S. Legal System</i> (optional); Bertelli & Lynn, “Public Management in the Shadow of the Constitution”; Moe and Gilmour, “Rediscovering Principles of Public Administration”; Nelson, “A Short, Ironic History of American Bureaucracy”; Rosenbloom, Chapter 1; Werhan, Chapter 1.
<u>Monday, September 2:</u> Labor Day holiday.	No class session.
<u>Monday, September 9:</u> Introduction to the Course, Part II: The Constitutional and Historical Context (conclusion).	Rosenbloom, Chapter 2; Werhan, Chapter 2. Caselaw: <i>Munn v. Illinois</i> (1876): https://supreme.justia.com/cases/federal/us/94/113/case.html ; <i>Mistretta v. United States</i> (1989): https://supreme.justia.com/cases/federal/us/488/361/ ; <i>Immigration and Naturalization Service v. Chadha</i> (1983): https://supreme.justia.com/cases/federal/us/462/919/ .

<p><u>Monday, September 16:</u> Due Process of Law in the Administrative State.</p>	<p>Werhan, Chapter 3.</p> <p>Caselaw: <i>Londoner v. City and County of Denver</i> (1908): https://supreme.justia.com/cases/federal/us/210/373/; <i>Bi-Metallic Investment v. State Board of Equalization of Colorado</i> (1915): https://supreme.justia.com/cases/federal/us/239/441/case.html; <i>Goldberg v. Kelly</i> (1970): https://supreme.justia.com/cases/federal/us/397/254/case.html; <i>Mathews v. Eldridge</i> (1976): https://supreme.justia.com/cases/federal/us/424/319/case.html; <i>Board of Regents of State Colleges v. Roth</i> (1972): https://supreme.justia.com/cases/federal/us/408/564/; <i>Perry v. Sindermann</i> (1972): https://supreme.justia.com/cases/federal/us/408/593/; <i>Cleveland Board of Education v. Loudermill</i> (1985): https://supreme.justia.com/cases/federal/us/470/532/case.html.</p>
<p><u>Monday, September 23:</u></p>	<p>Law library orientation/research tutorial. Meet in classroom and walk to the UGA law library.</p>
<p><u>Monday, September 30:</u> Introduction to the Administrative Procedure Act (APA) and Forms of Agency Action.</p>	<p>Rosenbloom, Chapter 3; Werhan, Chapter 4.</p> <p>Statute: <i>Administrative Procedure Act (APA)</i>: Agency Procedures—§§551-559: https://www.law.cornell.edu/uscode/text/5/part-I/chapter-5/subchapter-II; Judicial Review—§§701-706: https://www.law.cornell.edu/uscode/text/5/part-I/chapter-7.</p> <p>Caselaw: <i>Securities & Exchange Commission v. Chenery Corporation</i> (1947): https://supreme.justia.com/cases/federal/us/332/194/; <i>National Labor Relations Board v. Bell Aerospace Company</i> (1974):</p>

	https://supreme.justia.com/cases/federal/us/416/267/ .
<u>Monday, October 7:</u> Formal Administrative Adjudication.	Rosenbloom, Chapter 4; Werhan, Chapter 5.
<u>Monday, October 14:</u> Informal Rulemaking.	Werhan, Chapter 6; Yackee and Yackee, “Divided Government and U.S. Federal Rulemaking.” Caselaw: <i>Vermont Yankee v. NRDC</i> (1978): https://supreme.justia.com/cases/federal/us/435/519/case.html .
<u>Monday, October 21:</u> Judicial Review, Part I.	Rosenbloom, Chapter 6; Werhan, Chapter 7. Caselaw: <i>Citizens to Preserve Overton Park v. Volpe</i> (1971): http://caselaw.findlaw.com/us-supreme-court/401/402.html ; <i>Massachusetts v. Environmental Protection Agency</i> (2007): https://supreme.justia.com/cases/federal/us/549/497/ ; <i>United States v. SCRAP</i> (1973): https://supreme.justia.com/cases/federal/us/412/669/ ; <i>Sierra Club v. Morton</i> (1972): https://supreme.justia.com/cases/federal/us/405/727/ ; <i>Lujan v. Defenders of Wildlife</i> (1992): https://supreme.justia.com/cases/federal/us/504/555/ .
<u>Monday, October 28:</u> Judicial Review, Part II.	Werhan, Chapter 8. Caselaw: <i>Abbott Laboratories v. Gardner</i> (1967): https://supreme.justia.com/cases/federal/us/387/136/ ; <i>Motor Vehicles Manufacturer’s Association v. State Farm</i> (1983): https://supreme.justia.com/cases/federal/us/463/29/case.html ; <i>Luhan v. National Wildlife Federation</i> (1990): https://supreme.justia.com/cases/federal/us/497/871/ ; <i>Chevron v. NRDC</i> (1984): https://www.law.cornell.edu/supremecourt/text/467/837/ ;

	<i>United States v. Mead Corporation</i> (2001): https://supreme.justia.com/cases/federal/us/533/218/ .
<u>Monday, November 4:</u> Transparency and Discretion.	Rosenbloom, Chapter 5; Rosenbloom and Piotrowski, “Reinventing Public Administration”; Yackee, “Sweet-Talking the Fourth Branch.” Research paper topics due.
<u>Monday, November 11:</u> Accountability and Legitimacy.	Mashaw, “Reinventing Government and Regulatory Reform”; Feldman, “The Legitimacy of U.S. Government Power”; Lynn, “Restoring the Rule of Law to Public Administration.”
<u>Monday, November 18:</u>	Student presentations, Part I.
<u>Monday, November 25:</u>	Student presentations, Part II. Research papers due.
<u>Monday, December 2:</u>	Student presentations (if necessary).