

Spring 2014
Tuesdays (4:00-6:00 p.m.)

Professor Jeffrey Lubbers
Washington College of Law—American University

LAW-700C-001

CONTEMPORARY TOPICS IN ADMINISTRATIVE LAW

Because this is an advanced course, without special permission, Administrative Law is a pre-requisite.

There is no assigned casebook for this course. A set of readings compiled for this course will be available on MyWCL. I will also be placing on library reserve my *Guide to Federal Agency Rulemaking* (5th ed. 2012), which can be used as a reference throughout the course. Supplementary materials may be distributed or put on MyWCL during the semester.

This Seminar will survey 12 important and timely issues of administrative law—regulation, adjudication, judicial review and openness. To aid the class discussion of these topics, pairs of students will be assigned a leadership role in class discussions of each of those topics in a point-counterpoint format. Other students will provide a 1-2 page paper giving their views on the topic by Saturday noon the following week. These papers and class participation will form the basis for the grade in this class.

Course Outline

Week #1 (January 14): Introduction

Topics:

1. Outline of Seminar
2. Overview Administrative Law and Regulation

Week #2 (January 21): Independent Agencies—Are They Legitimate and Useful or Illegitimate and Unnecessary?

Week #3 (January 28): “Regulatory Burden”—Big Problem or Overstated?

Week #4 (February 4): OIRA Review of Rules and Cost-Benefit Analysis--Beneficial or Too Much Interference?

Week #5 (February 11): “Regulatory Reform Bills”—The REINS Act and the Regulatory Accountability Act—Is the Cure Worse Than the Disease?

Week #6 (February 18): Negotiated Rulemaking—Should Be Promoted Heavily, or a Costly and Dubious Tool That Should Be Used Sparingly if at All?

Week #7 (February 25): Agency Use of Incorporation-by-Reference—Bane or Boon to the Regulatory Process?

Week #8 (March 4): Agency Adjudication—Should ALJs be Required for all Hearing Programs?

[Spring Break]

Week #9 (March 18): Access to Judicial Review: Has the Supreme Court Made It Too Hard To Challenge Agency Action in Court or Are Current Limitations Appropriate to Prevent Undue Interference in Executive Administration

Week #10 (March 25): *Chevron/Mead*—Does the Current Doctrine Make Sense or Should We Go Back to the Traditional Multi-Factor Deference Doctrine?

Week #11 (April 1): Use of Legislative History in Judicial Review--the Scalia/Breyer Debates (Interpreting Statutes: Stick to the Text or Use Legislative History For What It’s Worth?)

Week #12 (April 8): Specialized Courts: Do We Need Them or We Should Resist Them As Second Rate Tribunals?

Week #13 (April 15): Openness & Transparency—Too Many Unanticipated Negative Consequences or “Sunlight is the Best Disinfectant”?

Week 14 (April 22): Wrap-up discussion—What Were the Most Important Issues? What Issues Did We Miss?