FIRST CLASS ASSIGNMENT

1. Read casebook, pages one through the top of page twelve.

2. Look over material in casebook from pages 372 to 378.

3. THIS IS A TWEN COURSE. PLEASE SIGN ONTO THE TWEN COURSE PROMPTLY.

4. I need volunteers to present the first two cases on the syllabus (IUD v. Amer. Petro and Whitman v. Amer. Trkg.). Please let me know (alpalewicz@verizon.net) if you are willing to present one of these cases. If I do not have volunteers by the Friday before the first class, I will pick the volunteers myself.

Thanks a lot. I look forward to working with you for this course. Al Palewicz
NOTE: THIS IS A TWEN COURSE. ALL STUDENTS SHOULD IMMEDIATELY SIGN ON TO THE TWEN COURSE AND PROVIDE ALL THE INFORMATION NECESSARY TO USE THE TWEN EMAIL AS THE PRIMARY WAY OF CONTACT WITH THE STUDENT

Introduction and background. The Constitutional Issue.
Case Book (CB) Appendix, APA § 551:
Agency, rule, rule making, order, adjudication, agency action. Model State APA [MSAPA] (CB Appendix C) § 1-102 (same definitions); Maryland APA (MdAPA), Maryland Code, State Government Article § 10-101 (entire).
CB pp. 1 to top of 12

THE CONSTITUTIONAL ISSUE EXAMINED:

Delegation of Legislative Power to agencies:
Case Book (CB) pp. 372 to top of 391;
Whitman v. Amer. Trkg. Assn., p. 382
CB p. 388, note 5 only.

Delegation of Adjudicatory Power to Agencies:
CB pp. 398-406 (notes 1, 2, 4, & 5),
CFTC v. Schor, p. 399

Constitutional Procedural Due Process:
Sources of the right to a hearing
Constitutional rights to a hearing: property and/or liberty
CB pp. 14 - top of 26

Goldberg v. Kelly, p. 16
CB PP. 26 - 34 (end of Note 4),
Bd. Of Regents v. Roth, p. 33
CB p. 36 – 42 (Notes 5 through 8),
Cleveland Bd. v. Loudermill, p. 37

Timing of a Hearing
CB pp. 43 – 53, Notes 1, 2, 3, & 4)

Matthews v. Eldridge, p. 44
Elements of a Hearing
CB pp. 53 - 61 (Notes 1, 4, 6, 7, 8)
Ingraham v. Wright, p. 53
Van Harken v. City of Chicago, 103 F.3d 1346 (7th Cir., 1997), p. 60

ADJUDICATION

Adjudication-Rulemaking distinction

CB pp. 62 – 66 (Note 3 only)
  Londoner v. Kelly, p. 62
  Bi-Metallic v. State Board, p. 63
  Statutory right to Hearing, basic concerns with adjudication

CB 69 – 77 (Notes 2, 4, & 6)
  Dominion Energy, p. 71
  United States Lines v. FMC, 584 F.2d 519 (DC Cir. 1978), p. 75
  Clardy v. Levi, 545 F.2d 1241 (9 Cir., 1076), p. 77
  Limiting the Issues to Which Hearing Rights Apply

CB 84 - 91
  Heckler v. Campbell, p. 84
  Levine v. Apker, 455 F.3d 71 (2 Cir. 2006), p. 90

The Conflict Between Institutional & Judicialized Decision-Making

CB 91 - 92
  Personal Responsibility of Decisionmakers

CB 92 - 98 (Notes only.)
  Ex Parte Contacts

CB pp. 98 - 107 (Notes 4, 5, & 6 only.)
  PATCO v. FLRA, p. 98
  Agency Adjudication & Legislative Pressure

CB pp. 108 - 113 (Notes 4 & 6 only.)
  Pillsbury v. FTC, p 108
  D.C. Federation of Civic Ass’ns. V. Volpe, 459 F.2d 1231 (D.C. Cir. 1971), p. 111
  Separation of Functions and Internal Agency Communications

CB 113 – 121 (Notes, 1, 4, 5, & 6)
  (Skip Alcohol Beverage Control)
  Bias: Personal Interest, Prejudgment, Animus

CB 122 – 128 (Notes 1 through 5)
  Cinderella v. FTC, p. 123
Friedman v. Rogers, 440 US 1, esp. 18-19 (1979), p. 126
Administrative Judges & Decisional Independence
CB pp. 128 – 137 (Note state material at 136 – 137)

PROCESS OF ADMINISTRATIVE ADJUDICATION
Notice and Parties to Adjudication
CB 138 – 145 (Notes 1, 3, 4 only)
Block v. Ambach, p. 138
Envirocare of Utah, 194 F.3d 72 (D.C. Cir. 1999), P. 143
Investigation & Discovery
CB pp. 145 – 154 (Notes 1, 2, 3, 4, 5, 6)
Craib v. Bulmask, p. 146
ADR
CB pp. 155 – 156, briefly.

THE HEARING
Evidence at the Hearing
CB pp. 156 – 164, (All cases are in Notes)
Ezeagwuna v. Ashcroft, 325 F.3d 396 (3d Cir. 2003), p. 161
Detroit Free Press v. Ashcroft, 303 F.3d 681 (6th Cir. 2002), p. 163
Citizens Awareness Network v. United States, 391 F.3d 338 (1st Cir. 2004), p. 164
(Limits on cross examination only)
Official Notice
CB p. 165 (top of page only), pp. 167 – 169 (Notes 1, & 2)
The Decision Phase: Finding Facts & Stating Reasons
CB 170 – 176 (skip text case Notes 4 & 6)
Armstrong v. CFTC, 12 F.3d 401 (3 Cir., 1973, p. 176
Effects of Decision:
Res Judicata & Collateral Estoppel
CB pp. 177 – 183 (Notes 4 & 5 only)
Stare Decisis
CB pp. 183 - 185
UAW v. National Labor Relations Board, p. 183
Estoppel
CB pp. 185 – 191,
Foote’s Dixie Dandy, p. 185
Heckler v. Community Health Services, 467 U.S. 67 (1984), p. 189

RULEMAKING
Introduction to Rulemaking
CB pp. 192 – 211 (Skip Notes 4 & 6)
Nat’l. Petroleum Refiners Assoc. v. FTC, 482 F.2d 672 (DC Cir. 1973), p. 196
American Library Assoc. v. FCC, 466 F.3d 689 (D.C. Cir., 2006, p. 197
Yesler Terrace Community Council v. Cisneros, 37 F.3d 442 (9th Cir. 1994)p. 202
Bowen v. G'town Hospital, p. 205
Retail Clerks Union v. NLRB, 466 F.2d 380 (DC Cir. 1972), p. 210
Initiating Rulemaking
CB 211 – 222 (Skip note 1, p. 195, & notes 2, 5, & 8)
Chocolate Manufacturers v. Block, p. 211
Shell Oil Co. v. EPA, 950 F.2d 741 (DC Ct., 1991), p. 221
Public Participation, CB p. 222
Informal Rulemaking, CB 222 – 224
Formal Rulemaking, CB 225 - 229
US v. FEC RR p. 2225
Hybrid Rulemaking, CB 230 - 238
Vermont Yankee, p. 231
Procedural Regularity in Rulemaking
CB 239 – 262 (Skip note 4, p. 260)
Home Box Office v. FTC, p. 241
Sierra Club v. Costle, p. 244
Assoc. Nat'l Advertisers v. FTC, p. 255
Findings and Reasons
CB 262 – 271 (Skip National Assoc. case, and notes 1, 2, & 6.)
Automotive Parts & Accessories Ass'n v. Boyd, 407 F.2d 330 (DC Cir. 1968), p. 268
Issuance & Publication, CB 271 – 280
Powderly v. Schweiker, p. 273
Nguyen v. US, p. 296
Regulatory Analysis CB 280 – 283
Corrosion Proof Fittings v. EPA, p. 281
Negotiated Rulemaking, CB 296 - 297
Exemptions from Rulemaking
CB 305 - 342
Good Cause Exemptions  CB 305 – 312
Jifry v. FAA, p. 306 (Skip notes 2 & 3.)
Exempted Subject Matter, CB 312 – 315, (skip note 3.)
Procedural Rules, CB 316 – 319 (Skip notes 2 & 3.)
Public Citizens v. Dept. of State, p. 316
US DOL v. Kast Metals 744 F.2d 1145 (5th Cir., 1984)
Profs. & Patients v. Shalala, p. 321
Interpretive Rules, CB 333 – 342.
Hoctor v. USDA, p. 333
Required Rulemaking
CB 342 – 350
NLRB v. Bell Aerospace, p. 343
Rulemaking Petitions & Agency Agenda Setting  
CB 354 – 363, (notes 1, 2, 3, & 8 only)  
*Massachusetts v. EPA*, p. 355  
Waivers of Rules  
CB 363 – 370 (Skip note 6.)  
*WAIT Radio v. FCC*, p. 363

**JUDICIAL REVIEW**  
Scope of Review : findings of fact, CB pp. 502 – 505  
Substantial Evidence and Clearly Erroneous Tests, CB, pp. 505 – 515, (skip notes 4 & 6.)  
*NLRB v. Universal Camera*, p. 505  
Independent Judgment & De Novo Review, CB 516 -518.  
Scope of Review: legal interpretations, CB 519 – 520  
The *Chevron Doctrine* CB 528 – 540 (Skip note 7.)  
*Chevron USA v. NRDC*, p. **528**  
Statutory Interpretation and the *Chevron Doctrine*, CA 540 – 553.  
*FDA v. Brown & Williamson Tobacco Corp.*, p. 541  
Informal Interpretations and the *Skidmore Alternative* CB 553 – 566.  
*Skidmore v. Swift*, p. 533, 323 US 134, 137-140 (1944)  
*Christensen v. Harris County*, P. 554  
*U.S. v. Mead Corp.*, P. 556  
Scope of Review: Discretionary Determinations in Adjudication  
CB 566 – 581 (Skip notes 6, 7, 8)  
*Citizens to Preserve Overton Park v. Volpe*, p. 567.  
*Salamedia v. INS*, p. 568  
Judicial Review of Discretionary Decisions in Rulemaking, CB 582 - 601  
*Borden v. Comm’r Public Health*, p. 589

**REVIEWABILITY OF AGENCY DECISIONS**  
Procedural Elements, CB 603 – 605  
Non-Statutory Review: Forms of Action, CB 606 – 608  
Damage Ations as a Form of Judicial Review, CB 609 – 615  
Recovery of Fees, CB 615 – 619  
Preclusion of Judicial Review, CB 619 – 626  
*Bowen v. Michigan Academy*, p. 620  
Notes, pp. 622 – 626  
Commitment to Ageny Discretion, CB 626 – 635  
*Heckler v. Chaney*, p. 626  
Notes 1 through 5, pp. 631 – 635  
Agency Inaction and Delay, CB 635 – 642  
*Norton v.Southern Utah Wilderness Alliance*, p. 635  
Notes pp. 640 – 642
STANDING TO SEEK AND TIMING OF JUDICIAL REVIEW

Standing to Seek Judicial Review. CB pp. 642 – 663
Lujan v. Defenders of Wildlife, p. 645
Notes, pp. 650 – 656
Assoc. of Data Processing Service Orgs. (ADPSO v. Camp, p 657
Notes pp. 660 – 663

Timing of Judicial Review
FTC v. Standard Oil of California (SOCAL), p. 664
Notes, pp. 668 – 670
Exhaustion of Administrative Remedies
Portela-Gonzalez v. Secretary of the Navy, p. 670
Notes, pp. 674 – 680

Ripeness
Abbott Laboratories v. Gardner, p. 681
Notes, pp. 686 - 691

List of Exam Problems For Fact Settings on Exam

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Grading structure:

Participation: 10% (All begin with a B. Excellent participation yields an A, poor participation yields a C, substantial lack of participation yields a D.) Students are expected to complete all reading assignments and to participate in class discussion consistently in order to demonstrate they have read and reflected on the issues raised in the material for each class.

Case recitals: 15%

TWEN Quizzes (Min. 5/Max. 8) 20%

Exam 55%

CLASS INSTRUCTIONS:
From time to time I will point out material that is important for the exam. Make a note of it.
All the assigned text material is material for the exam.
All TWEN material is material for the exam.
All class presentation and discussion is material for the exam.
You should be aware of and familiar with all the material posted under Course Materials on the TWEN site. (continued on next page)
For all class assignments you will be graded on your ability to present the procedural history and the facts of the material/case coherently, to identify clearly the issues involved, to present succinctly the associated, relevant legal principles and their sources, to describe and analyze effectively the holding(s)/conclusion(s) in the material/case, and to deal with questions and discussion points raised by the class or by the Professor during your presentation.

**Attendance Policy**  
*If you anticipate an attendance problem, discuss it with me as soon as possible. Most situations can be worked out to everyone’s satisfaction; but only if we discuss the matter before it becomes a problem.*

General Attendance Policy: Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (5 class periods for this course) may be compelled to withdraw from the course, or may be barred from sitting for the final exam. (Remember, in this course each class night is equal to TWO class periods!) Students who are forced to withdraw for exceeding the allowed absences may receive a grade of WA (administrative withdrawal) or a grade of WF (withdrawal failure). This policy is consistent with American Bar Association Standards for Law Schools.

**Religious Holidays**

It is the policy of the University of Baltimore School of Law to respect students’ observance of their major religious holidays. Students not attending class because they are observing religious holidays are to be given absences up to the maximum number of allowable absences as articulated above if they notify the professor in advance.

Students shall be given an opportunity, whenever possible, to make up within a reasonable time any academic assignments or tests that are missed due to individual participation in religious observances. Arrangements should be made to make up missed assignments or tests with the faculty member(s) in advance of the specific holiday. In addition, faculty is encouraged to video or audio record classes in which students have been excused for religious reasons. Where video or audio recording is an adequate substitute for class and the student views or listens to the recording, the student shall be deemed to have attended the class.

**Standards for Administration of Attendance Policy**

Attendance will be taken at the beginning of each class. A student who is present but unprepared for class may be treated as absent if the instructor announces at the beginning of the semester that unprepared students are treated as absent. (This part of the syllabus is the announcement described in the preceding sentence.) Likewise, a student who arrives late for class may, at the discretion of the instructor, be marked absent. (Anyone more than five minutes late for any class may be marked absent for that class.) Where video or audio recording is an adequate substitute for class and the student views or listens to the recording, and notifies the Professor by email that the video recording has been watched, the student shall be deemed to have attended the class, up to the number of allowed absences from class.
Quiz Policy: There will be a minimum of five and a maximum of eight unannounced quizzes during this semester. Quizzes will cover material from the textbook only, and only from the first six cases scheduled for the evening of the quiz. Quizzes are open book exams. Quizzes will be open on TWEN from 6:00PM to 6:25 PM on the night they are given. Only FIVE MINUTES are allotted for the taking of the quiz during the period it is open. Quizzes will be open again from 6:00 PM to 9:00 PM the following evening. Anyone who was absent from the class in which the quiz was given is to take it during the open period the following evening. ANYONE WHO CANNOT DO THIS MUST EMAIL ME WITHIN 48 HOURS OF THE ORIGINAL QUIZ TIME TO LET ME KNOW A ONE HOUR TIME WINDOW WITHIN FOUR DAYS OF THE ORIGINAL QUIZ WHEN THAT PERSON CAN TAKE THE QUIZ ON TWEN. I will open the quiz for them at that time. ANYONE WHO DOES NOT TAKE THE QUIZ THE EVENING AFTER IT IS GIVEN IN CLASS, OR MAKE ARRANGEMENTS WITH ME WITHIN 48 HOURS OF THE ORIGINAL QUIZ TIME FOR AN ALTERNATE TIME WILL RECEIVE A GRADE OF ZERO FOR THAT QUIZ.

Administrative Law--3 credits


Analysis of federal administrative agencies, including their legislative and judicial nature, congressional delegation of powers, promulgation of regulations, adjudication and judicial review. Emphasis will be on the Federal Administrative Procedure Act. [Open enrollment]

The goals of this course include introducing students to the origins and procedures of the practice of Administrative Law at the federal level. Students will also deal with the substantive law of federal administrative practice, to the extent it has been developed both in the Administrative Procedure Act and in court cases interpreting the APA since its passage.

All students are subject to the Academic Integrity Policy of the University of Baltimore School of Law at all times during this course. Notice of class cancellation will be sent to students by the TWEN email system, and will be posted on the classroom door.

Students should bring laptop computers to class. Laptop use for exams will be limited to typing the examination by means of the University’s installed software for this purpose.

THIS IS A WESTLAW TWEN COURSE. PLEASE SIGN ONTO THE COURSE RIGHT AWAY.