

PA 752
Public Administration and the Law
Spring 2007

Lecturer Christopher Burdick

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Class meetings: Mondays: 7:00-9:45

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Class website:
http://bss.sfsu.edu/burdick/PA_752/syllabus.htm

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Objectives

The purpose of this course is to review and assess the legal framework which forms the foundation for public administration in the United States today. We will look at how the American (federal and state) legal system represents one of the externalities which public administrators must deal with daily in their efforts to develop and carry out public policy and manage programs. Students will acquire non-technical familiarity and proficiency in constitutional law necessary to be effective administrators and consumers, as "clients", of available legal services. This is a course for non-lawyers, but we will attempt to make students aware of "how lawyers think", so they can more proficiently analyze issues and then decide if, when and how to engage, involve and manage legal counsel (and their attendant costs, direct and indirect) as they deal with the impacts the external legal process have on their everyday administrative decisions.

While other PA courses focus on the role the legislative and executive branches play in setting public policy and overseeing its implementation, this course concentrates on the courts and their crucial role in settling disputes that arise when public administrators attempt to implement their mandates. Today, the courts hold public administrators accountable and liable for knowing and protecting the constitutional rights of individuals, including agency employees, clients (including involuntary "clients", such as prisoners), applicants and the general public, and so it is essential that public managers have a basic grasp of constitutional law. In this course we will go beyond the basics by looking more closely at some fundamental constitutional doctrines (such as equal protection and due process) within the current context of public administration.

The course will introduce and examine the basic administrative law governing the establishment of public agencies, including structure, decision making processes, rulemaking, "sunshine in government," adjudication, and legal constraints on

administrative discretion. We also examine the significant role the courts, the unelected branch of government, play in setting public policy.

We will explore these themes through the required readings and assignments in a format designed to build the skills you need as public administrators. Since public administrators are not usually required to take written tests, none will be given in this class. However, public administrators *are* required to prepare for, attend, and actively participate in (that is, “think on your feet”) meetings with their colleagues and supervisors. Therefore, an important component of this course is demonstrating that you have read the material required in advance and have thought about it. Additional assignments will test your ability to conduct independent research, critically analyze and synthesize the information you attain, learn how to read statutes and court decisions and to identify and articulate the central controversies that underlie them. You will be required to clearly and concisely present your findings, both orally and in writing.

Requirements

REQUIRED TEXTS

Rosenbloom, David H. *Administrative Law for Public Managers*, Westview Press (2003). N.B. We were just informed that this book is out of print but there is/will be a copy on electronic reserve and it is widely available used on the net, e.g., amazon.

Rosenbloom, David H, James D. Carroll and Jonathan D. Carroll, *Constitutional Competence for Public Managers* F.E. Peacock (2000).

Beckett, Julia and Heidi O. Koenig (eds). *Public Administration and the Law*. M.E. Sharpe (2005).

We are fortunately supported at the Library by Sr. Asst. Librarian Mira Foster, at mira@sfsu.edu, who will work with all of us to access and reach the needed decisions and books.

JUDICIAL RULINGS

You will find excerpts of the judicial rulings we discuss hyperlinked to the class web page or in *Constitutional Competence*. But you should also become familiar with Findlaw.com and Lexis (available through SFSU library's website) in order to find the full Court decisions that are relevant for papers you write, and for statutes we will discuss during the semester. Ms Foster at the Library will assist those (like your Lecturer) who experience difficulties in this area.

Other readings will be hyperlinked to the class schedule web page, or available from Electronic Reserve (also linked to the class schedule web page). Readings will be added to the web page over the course of the semester, so please review it weekly.

PROGRAM AND CLASS EXPECTATIONS

The MPA program has the following expectation for all students in all classes:

Students are expected to attend all classes, be on time for class and stay for the entire length of class unless cleared with the profession in advance due to professional or other responsibilities elsewhere. Assignments are expected to be completed and to be turned in on time.

ASSIGNMENTS

Class participation. (10% of grade).

It is important that you learn, and demonstrate your ability to contribute to the discussion of the important subjects on our agenda, as you would if this were a discussion occurring at a meeting in the workplace. Expected contributions to the discussion include the following:

1. No later than noon of day of each class session, use the class Listserv to pose 2 questions for discussion from two of the assigned readings (each question from a different reading). To ensure you are not repeating a question already posed by a classmate, be sure to check to see what questions have already been submitted. If you have trouble with the Listserv, e-mail the question to me. These are questions about issues that can be discussed; not questions about facts (although you can certainly raise those as well).
2. Participate actively in discussions during class.
3. Pose questions to students presenting oral arguments before the SFSU "Supreme Court", as if you were a justice hearing the arguments.
4. If you are unable to attend a class, you are expected to contribute your thoughts about the reading by submitting written responses to at least four of the discussion questions posed by students for the discussion you missed, and at least one of the questions posed after each case excerpt assigned for the week in *Constitutional Competence*.

Short papers (25% of grade)

These are brief exercises designed to give you practice in finding, understanding and applying regulations, statutes or case law. You, as administrator in a hypothetical government agency, will be presented with a scenario and asked to find and interpret the relevant document and to write a brief (2 page) memo explaining its implication for the situation at hand. The [first](#) is due March 12; the others will be due one or two weeks after they are distributed in class. The instructions for these papers can be found on the class website.

Written Brief (25% of grade).

At the class meeting on February 5, I will ask each of you to sign up to represent either the plaintiff or respondent in one of the more current cases noted on the class schedule. You will be expected to develop an argument supporting that position, based primarily on the arguments made by the justices (or judges). The briefs are due April 9.

[Oral Argument](#) (10% of grade).

You will be required to present your argument to the SFSU Supreme Court justices (your classmates and me) in a “mock” Supreme Court session on the day scheduled in the syllabus. You should use the comments I will make on your written briefs to improve the quality and comprehensiveness of your oral argument.

[Paper on the Courts and Public Policy](#) (30% of grade)

For this paper, the student and the Lecturer will mutually select a public policy (e.g., Gov. Schwarzenegger’s proposals to deal with global warming or universal health insurance, prison health care or over crowding, stem cell research, the probable crisis in public sector pension and retiree health care finance, or some issue the student may actually have dealt with at work) that has been or will be addressed either by executive order or by statute (or both) and by the Courts. This paper will assess the impact each of the three branches of government has had or may have on the current interpretation and application of that policy. The paper (in WORD, Times New Roman 12-point font, spaced at 1.5 lines) will not exceed 30 pages in length, exclusive of footnotes, appendices, bibliography, etc.) will be primarily based on library research. The Lecturer will discuss possible subjects and themes with the full class in classes 3-5. A one page [proposal/outline](#) for this paper is due on March 19, and the Lecturer and the student will meet personally at least twice to agree on style and citation format and to review drafts and progress before the final paper is turned in on April 30. You will then make a brief presentation of your paper to the full class at the class on May 7.

Class Schedule

CC refers to the required text *Constitutional Competence*. Be prepared to discuss questions posed by the authors following assigned case excerpts.

AL refers to required text *Administrative Law for Public Managers*

PAL refers to the readings in the suggested text, *Public Administration and the Law*

ER refers to articles on electronic reserve. Find class, and then enter this password: **sandradoconnor** (all small letters, no apostrophe)

Where you need the full case, you can use [findlaw.com](#) (click on U.S. Laws, Cases & Codes, Supreme Court, and access cases by year). Full cases are also available from Lexis (available through SFSU [library website](#)). At the first class, the Library, through Mira Foster, will provide direct training in the use of these websites/search engines.

This is a preliminary list of readings. *Please check the class schedule web page weekly for updates. Discussion questions should be e-mailed every week by noon the day of the class meeting.*

Date	Topic	Reading/Assignments
January 29	Introduction to class - Looking generally at "The Judiciary and The Law". Introduction by Library to legal searches.	CC preface, ch 1 (pp. 1-18); AL: 2. Suggested - PAL: 3
February 5	Judicial Structure and Process	CC: 9 ER Rosenbloom & O'Leary: (see above for password) Suggested -- PAL: 1, 5 Lawrence v Texas, 156 L Ed 2d 508 (2003)
February 12	Administrative Law: Origins & Requirements	AL: 4, 5 Suggested --PAL: 13, 14 Industrial Union Dept., AFL-CIO v. American Petroleum Institute (1980) ; Schechter Poultry vs US, 295 US 495 (1935) ; Industrial Union Dept. vs. American Petrol. Inst., 448 US 607 (1980) , and Morrison vs Olson, 487 US 654 (1988) ; brief, summary class presentation of chosen agency
February 19	Administrative Law: Rulemaking	ER : Barry and Whitcomb, chapter 6; and App. B (the APA); AL: 3;PAL: 11; internet work on chosen agency re its structure and regulations; and brief class presentation thereon
February 26	Administrative Law: Legislative and Judicial Review	AL: 6; PAL, chs 8-10; Chevron U.S.A. v. Natural Resources Defense Council (1984) ; Heckler v. Chaney, 84 L Ed 2d 714 (1985)
March 5 D. Margolis, Esq., Guest Lecturer	Public Administrators' Accountability & Liability	PAL: 20, and CC: 2 (including cases) Hope v Pelzer, 153 L Ed 2d 666 (2002) ; Brosseau v. Haugen, 160 L Ed 2d 583 (2005) ;

Date	Topic	Reading/Assignments
March 12, L. Frierson, Esq., Guest Lecturer	Constitution and PA: 4th Amendment and Privacy	<p>AL: Review relevant sections of ch 2; CC cases 4.1, 4.2 and 6.4; Atwater v. City of Lago Vista, 149 L Ed 2d 549 (2001); Hiibel v. Sixth Judicial District of Nevada, 159 L Ed 2d 292 (2004); Illinois v Cabelles (2005); Illinois v. Lidster, 157 L Ed 2d 843 (2004)</p> <p><i>1st short paper due</i></p>
March 19	The Constitution and PA: Substantive Rights	<p>CC, text of 5, 7; cases 5.2, 6.3, 7.1, 7.2, 8.2;</p> <p>Cutter v. Wilkinson, 161 L Ed 2d 1020 (2005); McCreary v ACLU, 161 L Ed 2d 600 (2005); San Diego v Roe (2004); Thomas v Chicago Park District, 151 L Ed 2d 783 (2002); Van Orden v Perry, 160 L Ed 2d 220 (2005); Zelman v. Simmons-Harris (2002)</p> <p>Proposal for policy paper due</p>
March 26	Constitutional Structure: Federalism	<p>CC cases 1.4, 1.5, 1.6; PAL ch 6; U.S. v Morrison, 146 L Ed 2d 658 (2000); Solid Waste Agency of No. Cook County v Army Corps of Engineers (2001); Gonzales v Raich, (2005); Federal Maritime Commission v South Carolina State Ports Authority, 151 L Ed 2d 297 (2002); Tennessee v. Lane (2004)</p>
April 2	The Constitution and PA: Equal Protection	<p>PAL: 18; CC text of 4 & 8 ; cases 4.4, 5.3, 4.3, 7.3, 7.4, 8.3;; Gratz v. Bollinger, 156 L Ed 2d 257 (2003); Grutter v. Bollinger, 156 L Ed 2d 304 (2003); Johnson v California, 158 L Ed 2d 696 (2005)</p>
April 9	No class	<p><i>Written briefs due</i>; Work on policy paper proposal</p>

Date	Topic	Reading/Assignments
April 16, W. Kay, Esq., Guest Lecturer	Privatization and Outsourcing	Suggested -- PAL: 7 CC: 3 (including all cases) and case 9.1 Brentwood Academy v. Tenn. Secondary School Assoc. , 152 L Ed 2d 382 (2001); Correctional Services Corp. v. Malesko , 151 L Ed 2d 456 (2001); Town of Castle Rock v Gonzales , 160 L Ed 2d 767 2005)
April 23, C. Platten, Esq., Guest Lecturer	The Constitution and PA ; 'New Property' and Takings Clause	CC: Text of 6 and cases 5.1, 6.1, 6.2, 8.1, 8.4; AL Review relevant sections of ch 2; ER: Barry and Whitcomb, chapter 7 (excerpt); Suggested -- PAL: 12 ; Kelo v City of New London , 160 L Ed 2d 1093 (2005)
April 30	Constitutional Structure: Separation of Powers	AL: Review relevant sections of ch 2; PAL: 2; CC: cases 1.1, 1.2., 1.3 Youngstown Sheet & Tube v. Sawyer (1952); Hamdi v. Rumsfeld , 159 L Ed 2d 578 (2004) <i>The courts and public policy paper</i> due
May 7	The Courts and Public Policy	Presentation of student papers on courts and public policy
May 14 - Final Class	Supreme Court Arguments; Summary Review, Analysis, and Q & A Session	Students read all Supreme Court Briefs and student writers will discuss their briefs and take Q & As

A Note on Plagiarism and Academic Misconduct

Whenever words are taken directly from another author without quotation marks and direct attribution to the author, it constitutes plagiarism which is a serious and punishable offense at this university. Please ensure that your papers are written in your own words, that ideas and facts taken from others are clearly attributed to them, and that anything taken verbatim from another source is enclosed in quotation marks. Citations can take the form of footnotes or in-text references, but there should be a full bibliographic reference somewhere in the document. In the case of a direct quotation, the citation should include the page number where the quote was found as well. Direct quotes from another author should be used sparingly, and only when the point you are making is stated best by using someone else's words.

Cheating and plagiarism are contrary to the mission of the university and are never tolerated. Students who display inappropriate conduct, including cheating and plagiarism, may be subject to disciplinary action as provided in Title 5, California Code of Regulations. Any student may be expelled, suspended, placed on probation, or given a lesser sanction for discipline problems. The Student Discipline Officer, housed in the Dean of Students Office, is responsible for administering the Student Disciplinary Procedures for the California State University and should be contacted for further information.

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