PADM-5308: Administrative Law

Prepared by
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Course Overview & Syllabus
Texas A & M –Corpus Christi  
Course Syllabus for PADM 5308-001  
Administrative Law  
Fall, 2012  
Wednesday, 7-9:30 p.m., BH 222

Instructor: Linda Kiltz, Ph.D.  
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Office Hours: Monday: 3-5; Wednesday: 3-6pm; or by appointment.

COURSE DESCRIPTION

This course will focus on the place of administrative law within the constitutional and legal system in the United States. Administrative law consists of those sections of federal and state law that authorize the rulemaking and adjudicatory functions of executive branch and independent regulatory agencies. As such it is largely technical, dealing primarily with the procedural requirements which agencies must fulfill in order to promulgate regulations, adjudicate disputes, enforce sanctions, or grant licenses. Public managers, non profit executives, and ordinary citizens must be aware of these procedures so that they may influence policy decision making and implementation.

Administrative law can also be understood as an exciting area of dispute within constitutional and democratic theory. Our readings and discussions will therefore go beyond a simple description of legal processes employed by administrative agencies, and will attempt to explain the functions of such institutions in both historical terms and according to their place in a constitutional democracy. Unlike those institutions explicitly provided for in the Constitution, administrative agencies must constantly justify their powers, and even their very existence, by reference to the statutes which provide them with their powers and to the procedural rules by which they must act. We will also review the rights of public employees and the rules regarding legal liability that affect states, agencies, public officials, and public employees.

LEARNING OBJECTIVES

1. To value the importance of administrative law and the rule of law for the success of democratic governance through course readings and case briefs of historical cases.

2. To explain the origins and operation of the administrative rule-making process through class discussions and written assignments.

3. To analyze the relationships among the courts, agencies, the legislature, and other actors in the policy process through class discussions and written assignments.
4. To become literate in the law to some elementary degree as demonstrated through legal research activities, legal exercises, and case briefs.

5. To describe the complexity of policy issues and the context in which public decisions are made and policies are implemented through the analysis of case studies.

6. To summarize the three most important ethical values that have shaped America’s rule of law system: liberty, property and equality through the analysis of case studies.

REQUIRED TEXTS and READING


Readings available via Blackboard that will include:

- Court Cases
- Scholarly Articles
- On line materials on the Constitution, Federalist Papers, Etc

RECOMMENDED READING


SUPPLEMENTARY RESOURCES

Some supplementary resources may be found in the course Blackboard site in the Discussion folder. Here students will find additional reading for each topic discussed each week as well as web resources to obtain more in-depth information on a specific topic.

STUDENT PERFORMANCE EVALUATION

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STUDENT PERFORMANCE REQUIREMENTS

1. Book Review

Students will write a critical book review on the book *Little Pink House* by Jeff Benedict. A book review is a description, critical analysis, and an evaluation on the quality, meaning, and significance of a book, not a retelling. It should focus on the book's purpose, content, and authority. A critical book review is not a book report or a summary. It is a reaction paper in which strengths and weaknesses of the material are analyzed. It should include a statement of what the author has tried to do, evaluates how well (in the opinion of the reviewer) the author has succeeded, and presents evidence to support this evaluation. Students are expected to analyze this book with an understanding of eminent domain and previous case law related to this issue. Information on how to write a critical book review is in Appendix A that will be available online to registered students.

These reviews should be formatted as a word document using Times New Roman 12-point font, double-spaced using APA formatting. Papers should not be less than 6 pages or more than 8. The book review will be worth 20 points for 20% of the final grade.

2. Research Paper Assignment

Students are asked to write a research paper that analyzes and evaluates the current scholarly literature on one of the following vital administrative law questions:

1. How much power should be delegated to administrative agencies? Should this power distribution vary depending on type of administrative agency?
2. What is administrative discretion and how much administrative discretion is too much?
3. Does the doctrine of sovereign immunity extend too much power to governmental agencies? Give a recent example or case show this to be true or untrue.
4. What is meant by “due process” and what constitutes “arbitrary and capricious” agency decisions? Provide a recent court case that clearly shows a violation of due process.
5. How can administrative officials be allowed to administer needed public policies without infringing on the rights of individuals?
6. How does an extreme interpretation of “executive privilege” square with the rule of law, popular sovereignty, limited government, separation of powers and other notions of popular government?
7. How free can a county be if administrative agencies are permitted to make laws, administer them, and decide on the appropriateness and fairness of their own laws?
8. Is procedural due process less important than substantive law?
9. What internal and external safeguards can be developed to control administrative discretion and prevent abuses?
10. What should be done to control the regulators? What can the courts & legislatures do?

This paper will allow students to examine a topic in greater detail and may include such things as a greater analysis of a specific court case we have discussed, a review of a scholarly literature on a topic in the syllabus or in the textbook, or an analysis of a current event as it relates to the question and course themes. The paper must be formatted using APA style formatting and legal citations as needed. This paper should be no less than 10 pages and no more than 14 pages double spaced. It is expected that at least 12 scholarly and/or legal citations be utilized. The paper will be worth 30 points for a total of 30% of your final grade. See Appendix B for scoring rubric.
3. Midterm Exam

Students will be given a take home mid term exam that will be administered via Blackboard the 7th week of class and will be based on class readings and cases up to that point. The exam will consist of essay questions. The midterm will be worth 20 points of 20% of the final grade.

4. Legal Research Assignment

This is legal technique assignment that will give students the opportunity to explore the broad range of legal resources available to them. You will need to have access to a computer and be able to access the Library home page. We will completing part of this assignment in class during week 2. This is worth 5 points or 5% of your final grade.

5. Informed Class Participation & Weekly Reflections

A great deal of information will be presented in this course, thus it is critical that students not only attend all classes but also read the assigned readings before class and be prepared to discuss the readings and court cases both as a large group and in small group discussions. This course is designed to have you acquire a significant portion of the material through your readings, which consists of textbooks, as well as scholarly articles and cases that will be available through the library and the course Blackboard site.

To help students critically analyze course readings each week, students will be required to complete three weekly reflections. worth 5 points each. These reflections are more than descriptive summaries of the readings or how one is feeling about a set of readings. Reflection papers should be no more than five double spaced typed pages and have the following components:

Part A: Describe in detail and as objectively as possible the readings for the week.

Part B. Examine the reading in light of the content of this course. What is the nature of the significance of this issue to you as a public administrator and why? Consider your feelings, your values and your knowledge and experience, and further explicate the concepts in the readings and what they mean to you. How do you feel about it? What are the implications to public administrators?

Part C. Summarize the court case and explain how it related to the topic for the week.

Class participation will be worth 10 points and weekly reflection papers will be worth a total of 15 points. Student participation is important because we will be using class time to work through concepts, processes, issues and new developments that go beyond the reading itself. Students are expected to notify the instructor if they will be missing classes and are required to turn in any assignments that are due even if they will not be in class.

SUBMITTING ASSIGNMENTS

All assignments are due the day given on the syllabus. Excused late papers will be allowed only for significant and verifiable personal emergencies (personal serious illness, etc). Unexcused late assignments will be penalized a half of a full letter grade for each day it is late. (Ex. After 2 days a paper goes from an A to B). Please make a copy (or electronic backup) of your assignments before
submitting them to me. Please submit assignments in hard copy the day they are due in class or e-mail them to me via Blackboard. Please do not fax assignments to me.

For the written assignments, please use standard fonts (times new roman, size 12) and 1-inch margins and double spacing. If you send a paper via e-mail, please make sure to get a confirmation message from me to ensure that I was able to download the file and read it. Sometimes there are difficulties with software or system compatibility. Please send all documents to me in MS Word. Please submit them in word (.doc) format and not as doc.x. Do not assume I have received an assignment unless I send you a confirmation message that I was able to download your material.

All papers are expected to use APA style formatting and include proper citations, title sheet, list of references, and page numbers. Papers should not be rough drafts but rather final versions that are written using proper English grammar and have minimum spelling errors. Papers will be evaluated on content as well as proper grammar and spelling. See scoring rubric in Appendix B. References or sources of information for papers must consist of scholarly articles, journals, books, government reports, court cases (with proper legal citations) and course readings. The use of Wikepedia or other internet encyclopedia for any paper is not acceptable for graduate level work and will not be accepted.

ACADEMIC HONESTY

All work done for this course is to be the product of a student’s own efforts with proper academic attribution to sources. Students are expected to do their own work and abide by the Texas A & M Corpus Christi Student Code of Conduct.

Students will be expected to provide the proper identification of source data including language, ideas, and products of another author using APA style in all written assignments. The assignments in this course are not group exercises, though study groups are encouraged for reviewing course materials. Plagiarism, which includes the use of paraphrase or direct quotation of the published or unpublished work of another person without full and clear acknowledgment, or the purchase and selling of academic papers, or cutting and pasting items from the internet without proper citation will not be tolerated in this course. Students found to be plagiarizing will be given a minimum of 0 points for the assignment, and may receive a failure for the course and removed from the MPA program. Incidents will be reported on the Student Misconduct Form and reported to the Vice Provost of Student Affairs in accordance with TAMUCC policies.

Students who are found to be cheating or plagiarizing may not only get a zero on that particular assignment but may also be given a failure for the course, and/or removed from the MPA program. All acts of student misconduct will be reported to the Department of Student Affairs.

STUDENTS WITH DISABILITIES

Texas A & M University-Corpus Christi complies with the Americans with Disabilities Act in making reasonable accommodations for qualified students with disabilities. If you suspect that you may have a disability (physical impairment, learning disability, psychiatric disability, etc.) please contact the Services for Students with Disabilities Office, located in Driftwood 101, at 825-5816. If you need disability accommodations in this class, please see me as soon as possible.
ACADEMIC ADVISING

For Academic Advising students should see the MPA Coordinator, Dr. Joseph Jozwiak or see an Academic Advisor at the Academic Advising Center located in Driftwood 203 E, and can be reached at 825-3466.

GRADE APPEAL PROCESS

As stated in University Rule 13.02.99.C2, Student Grade Appeals, a student who believes that he or she has not been held to appropriate academic standards as outlined in the class syllabus, equitable evaluation procedures, or appropriate grading, may appeal the final grade given in the course. The burden of proof is upon the student to demonstrate the appropriateness of the appeal. A student with a complaint about a grade is encouraged to first discuss the matter with the instructor. For complete details, including the responsibilities of the parties involved in the process and the number of days allowed for completing steps in the process, see University Rule 13.02.99.C2, Student Grade Appeals, and University Procedure 13.02.99.C2.01, Student Grade Appeal Procedures. These documents are accessible through the University Rules Web site at: http://www.tamucc.edu/provost/university rules/index.htm. For assistance and/or guidance in the grade appeal process, students may contact the Office of Student Affairs.

COMMUNICATIONS

Over the past two decades there has been a dramatic expansion in electronic mail, smart phones and IPADs. While these devices are helpful they have also created some communications issues with which we are all familiar. First, when writing e-mails please use normal syntax and avoid e-speak. Second, avoid sending controversial e-mails. If you have a difference of opinion please discuss it in person with the individual or, if that is not possible, by telephone. There is a tendency these days with e-mails, texts and chat sites to say things in ways one would not say in face-to-face conversation and to use excessively sharp or harsh language. Related to those problems is a tendency to become overly familiar or simply unprofessional. Professionalism and respect are as essential in e-mail as they are anywhere else.

Please be aware that I access e-mail every weekday to answer e-mails, provide feedback to students and answer questions. If you do send e-mails in the evening, please be aware that they may not be read and no response provided until the next day at the earliest. I also do not access e-mail on the weekends as this time is spent with my family and on my own scholarship and research. I will make every effort to respond to your questions as soon as possible. Finally, do not assume that I have received an e-mail because you sent one. There are numerous system problems in software and in Internet Service Providers that can mean that e-mails do not reach their intended destination. I will acknowledge e-mail when I receive it. Please use the mail feature in Blackboard to contact me for this class.

Important information for this course will be distributed via Blackboard. Class readings, discussion forums, and additional course resources are available on the Blackboard site for this course. It is your responsibility to monitor your e-mail account regularly to obtain these materials. Please let me know if your e-mail account changes or if you have difficult accessing Blackboard.

Finally, please ensure cell phones and text messaging devices are turned off or on vibrate during the class as these devices are disruptive to the class. Also computers can be used in the classroom for note taking.
but it is not acceptable for students to be surfing the net during class, texting friends, or other disruptive behavior. Students may not take pictures, video tape or audio tape any presentation without consent of the instructor. Thank you for your cooperation in this area.

ACCESSING ASSIGNMENTS ON THE INTERNET

This course will require that students access reading assignments, research materials, and court cases via Blackboard or through university library information systems. The major database that will be utilized is Lexis/Nexis that is available via the library home page. To access this database you will need a university logon and password.

SYLLABUS DISCLAIMER AND CHANGES.

The instructor reserves the right to make changes in the syllabus. Such changes will be announced in class.

SPECIAL INSTRUCTIONS FOR THE USE OF BLACKBOARD

This class will be a web-enhanced course that meets each week in the classroom but will utilize Blackboard Technology to disseminate course information such as the syllabus, readings, and course materials, to deliver the midterm exam and other course assignments, to send and receive e-mails, to promote discussions about course topics, and to disseminate course announcements. Since most course information will be disseminated through Blackboard, students will be expected to login at least three times per week to receive information. The instructor will monitor the Blackboard site each weekday, except holidays, during the semester to answer emails, grade assignments and respond to student posts. The same academic standards apply in the Blackboard environment as in the classroom.

1. Technical Support Information & Requirements
To get to the login page for Blackboard 9.1, students should go to: https://bb9.tamucc.edu/webapps/login/
2. Students will need to have access to a computer with software that is able to read word and pdf documents. IOL runs on a web based application called Blackboard through a web browser. If your computer can successfully run Microsoft Internet Explorer or any of its alternatives, then you will be able to use IOL. Please note that your web browser must be configured properly to work with IOL by installing Sun Java Runtime Environment, ensuring Javascript, pop-up blockers, and cookies settings are properly configured.
Getting started with your Web Supported Class

Your class will be using the Blackboard platform. Blackboard is an easy point and click interface that has replaced WebCT. You cannot get access to the full class until the term begins. Don’t worry if you have not taken an online class before or used Blackboard. It is incredibly easy to navigate! To access Blackboard and get around in the course follow the steps below:

1. Follow the link to TAMUCC island online: https://iol.tamucc.edu/
2. On the lower right hand side of the screen you will see a log-in for Blackboard. Click next to Blackboard and then enter your log-in information. Your log-in is your E-Mail Login (name) and Password.
3. Once in Blackboard you should have all of the classes you are currently taking listed in the middle of the screen.
4. The first thing you will see in Blackboard is a welcome announcement from your instructor. Click on the course information page to get to the syllabus and other course information.
5. The course content is found by clicking in the learning modules tab on the left hand side of the screen. In each of the learning modules for each week, you will find a weekly discussions and activities folder, assignments folders and readings folder.
6. In the tools folder you will find the icon for e-mail, calendars, my grades and other items.
7. Mail: send a message to your instructor or classmates click on the mail icon in the tools folder. To send a message click “create message”, “browse for recipients”, now click the recipient of your message – choose “all section instructors” to send a message to your professor).

For more assistance on how to use Blackboard go the student tutorials at: http://ondemand.blackboard.com/students.htm#WorkingInYourCourse
SYLLABUS FALL TERM 2012

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<tr>
<th>Date</th>
<th>Topic</th>
<th>Assignments Due</th>
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<tr>
<td><strong>Week 1</strong></td>
<td>Course Review &amp; Introduction</td>
<td>Read Syllabus</td>
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<td>8/22/12</td>
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Assigned Readings:

Syllabus

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<tr>
<th>Week 2</th>
<th>The Law in Books</th>
<th>Class will meet on-line</th>
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<tr>
<td>8/29/12</td>
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<td>Legal Research Assignment Due</td>
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Assigned Readings:


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<th>Week 3</th>
<th>Constitutional Foundation &amp; Debates</th>
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Assigned Readings:

Constitution of the US
Federalist Papers # 1, 10, 14, 23, 37, 51, 57, 70³

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<th>Week 4</th>
<th>History of Law and Administration</th>
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Assigned Readings:

Warren, Kenneth. Chapt. 2: The growth of Administrative power and its impact on the American system

¹ Reading found on Blackboard; book is available in the Library on Reserve.
² Reading found on Blackboard; book is available in the Library.
³ Look up these on-line or purchase *the Federalist Papers*
⁴ Reading found on Blackboard; book is available in the Library.
Week 5  Administrative Accountability & Responsibility
9/19/12

Assigned Reading:
Warren, Kenneth. Chapt. 3: Legislative attempts to achieve democratic accountability
Clinton v. Jones, 137 L.Ed.2d 945(1997)

Reflection Due

Week 6  Protecting Administrators from Interference
9/26/12

Assigned Reading:
Warren, Kenneth. Chapt. 4: Protecting administrators from undue interference and harassment

Week 7  Black Letter Law of Public Administration
Rules, Ordinances and Statutes
10/3/12

Assigned Reading:
Warren, Kenneth. Chapt. 5: Rulemaking
Kerwin, Cornelius. Chapt. 13: Negotiated Rulemaking. In Handbook of Public Law and Administration. 6

Reflection Due

Week 8  Midterm Exam
10/12/11

Exam will be available via Blackboard on Wed/ 10/10/12 and will be due by noon on Sun., 10/14/12.

Week 9  Order making & Agency Hearings
10/17/12

Assigned Reading:
Warren, Kenneth. Chapt. 6: The public policy-making tug-of-war between rulemaking and ordermaking
Warren, Kenneth, Chapt. 7: Agency Hearings: How Fair are they?

5 Reading found on Blackboard; book is available in the Library on Reserve.
6 Reading found on Blackboard; book is available in the Library.
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<td><strong>Week 10</strong></td>
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<td>10/24/12</td>
<td><strong>Judicial Review</strong></td>
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<td><strong>Assigned Reading:</strong></td>
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<td>Warren, Kenneth. Chapt. 9: Judicial Review of Agency Behavior</td>
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<td>Mathews v. Eldridge</td>
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<td>10/31/12</td>
<td><strong>Administrative Discretion</strong></td>
<td><strong>Reflection Due</strong></td>
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<td><strong>Assigned Reading:</strong></td>
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<td>Warren, Kenneth. Chapt. 8: Administering public policies: Discretionary agency actions</td>
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<td>Chapters 1-25 <em>Little Pink House</em></td>
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<td>11/7/12</td>
<td><strong>Eminent Domain</strong></td>
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<td><strong>Assigned Reading:</strong></td>
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<td>Chapters 26-47 <em>Little Pink House</em></td>
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<td><strong>Book Review Due</strong></td>
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<td>11/21/12</td>
<td><strong>NO CLASS-Thanksgiving Holiday</strong></td>
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<td>11/28/12</td>
<td><strong>Assigned Reading:</strong></td>
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<td>Students will give a 7 minute presentation on their research paper on this date. <strong>Research paper Due</strong></td>
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**Assignment Due Dates:**

- Weekly Reflections: Weeks 5, 7, 11 (9/19; 10/3; 10/31)
- Legal Research Assignment: 8/29/12
- Midterm Exam: 10/14/12 (via Blackboard)
- Book Review: 11/14/12
- Research Paper: 12/5/12

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7 Reading found on Blackboard; book is available in the Library.
8 Reading found on Blackboard; book is available in the Library on Reserve.
Appendix A: Writing Book Reviews

Every book makes different demands on the reviewer. No single approach is right for all books. The suggestions that follow are just that; suggestions. Use as many of them as seem pertinent, but remain responsive to the book under consideration.

1. Reading the book

When you read, your critical faculty should be alert, but that doesn’t mean you are poised for attack. You can do your best if you read in a spirit that is at once critical and sympathetic.

Read the whole book thoroughly and carefully. Reread what you don’t understand. Don’t skip forewords, prefaces, and other parts that may not appear integral to the text. What you learn here might help you to understand the book better. If possible, it’s best to read the book twice, the first time to get an overview, the second time to test your impressions and gather detailed evidence.

Take notes as you read. The list that follows will give you an idea of what to watch for. Taking notes also helps you stay alert as you read, and gives you the opportunity to mark effective passages for quoting.

2. Questions to ask as you read

a. What are the author's subject and the broad field into which the work fits?

b. What approach does the author take to the subject? What is the central thesis? What are the author's assumptions? What methodology is used?

c. What are the author's primary sources? How comprehensive is the research?

d. For whom is the book written? Fellow scholars? Non-academics? Is the book appropriate to its audience?

e. How is the book structured? Is its development orderly and logical? Is it clear?

f. Is the author’s prose readable? Exceptionally good?
g. Does the book have illustrations? An index? Bibliography? What other features does it have? Are they effective and useful?

h. How appropriate is the book’s title? Does it promise essentially what the book delivers?

i. Are you aware of factual errors in the book? Oversights? Faulty assumptions?

j. Why was the book written? Has the author met these objectives?


3. Writing the review

Writing a book review is much like writing any other short essay. There is no universal formula, but following a few basic guidelines can simplify the task.

Review your notes and list the points you'd like to make.

Arrange those points in a logical order. Time spent now on organization not only produces a strong, clear structure, but also allows you to concentrate on phrasing during the writing of the first draft. One possible way of setting up the essay is like this:

1. A brief description of the subject, aim, and scope of the book
2. An outline of its thesis and its bias
3. A detailed assessment of the author's main contentions
4. An evaluation of the book's major strengths and weaknesses
5. A survey of topics not yet covered (sources, illustrations, indexes, etc.)
6. An assessment of the book's place in the literature of its subject

Write the first draft, not stopping to fine tune the phrasing, but aiming to get onto the paper all that you have to say.

After some time has elapsed, read the draft critically, noting where it is ambiguous, incomplete, overwritten, etc.

Read the second draft, checking for errors in grammar and punctuation, and making sure that you have said just what you meant.

Type the final draft.

Proofread the typed copy, and correct as necessary to ensure that it is free from errors.
APPENDIX B: SCORING RUBRICS

To help students understand how their papers will be graded and what is expected in the writing assignments for this course, the following scoring rubrics will be utilized.

I. Rubric for Legal Research Assignment (5 points)

A. Score of 4-5: Assignment turned in on time with two or less errors.
B. Score of 3-3.99: Assignment turned in on time with 3 to 4 errors.
C. Score of 2-2.99: Assignment turned in on time with 5-6 errors.
D. Score of 1-1.99: Assignment turned in on time with 7-8 errors.
E. Score below 1: Assignment turned in on time with 10 or more errors.

II. Class Participation and Weekly Reflections

Students will receive a maximum of 5 points for each weekly reflection that is turned in for a maximum total of 15 points. The scoring will be as follows and be based in part on the Rubric described below for Paper assignments.

5-Superior Paper 4-Good 3-Fair 2-Poor 0-1-Failure

IV. Rubrics for Paper Assignments (Book Review & Research paper)

F. The Superior Paper (A/A-)
   a. Follows Directions: Responds fully and appropriately to the assignment in a timely fashion.
   b. Thesis: Easily identifiable, clear and concise, insightful, and appropriate for assignment
   c. Use of Evidence: Appropriate source information (from scholarly journals, PA textbooks, and other scholarly sources) used to support thesis and buttress all arguments made in the essay; excellent integration of course materials into the writing with few quotes. Uses APA formatting correctly.
   d. Analysis, Logic and Argumentation: All ideas progress logically from identifiable thesis; compelling justifications are offered to support thesis; counter-arguments are anticipated and addressed. Accurately interprets evidence and statements. Identifies the salient arguments (pro and con). Draws warranted, judicious, non-fallacious conclusions.
   e. Organization: Coherent and clear. All paragraphs support thesis statement; each paragraph supports its topic sentence. Excellent transitions.
   f. Mechanics (Grammar, Spelling, Sentence Structure): Excellent command of language; proper use of grammar with few or no spelling mistakes. Correct word choice, excellent variety and complexity of sentence structure.

B. The Good Paper (B+/B)
   a. Follows Directions: Responds reasonably well to assignment in a timely manner
   b. Thesis: Identifiable, clear and appropriate
c. **Use of Evidence:** Appropriate source information (from scholarly journals, PA textbooks, and other scholarly sources) used to support thesis and buttress most arguments made in the essay; Some evidence not support the point or not appropriate; good integration of sources/course materials into the writing with quotes used appropriately. Uses APA format mostly correctly with some minor errors.

d. **Analysis, Logic and Argumentation:** Argument of paper is clear, usually flows logically and makes sense. Some evidence that counter-arguments acknowledged. Accurately interprets evidence and statements. Identifies relevant arguments, reasons and claims both pro and con. Justifies some results or procedures, explains reasons.

e. **Organization:** Mostly coherent, generally supports thesis, good transitions.

f. **Mechanics:** Generally proper use of grammar, minimum spelling mistakes, some variety and complexity in sentence structure.

C. **The Borderline Paper (B-/C+)**

a. **Follows Directions:** Some significant failure to complete assignment as directed or untimely.

b. **Thesis:** Very weak, unclear or difficult to identify, or inappropriate for assignment

c. **Use of Evidence:** Very weak use of source information (from scholarly journals, PA textbooks, and other scholarly sources) used to support thesis: Fails to buttress most arguments made in the essay; evidence is weak or does not support the point or not appropriate; Little integration of sources/course materials into the writing with quotes used excessively with no analysis or explanation. Uses APA format incorrectly with many errors.

d. **Analysis, Logic and Argumentation:** Argument of paper is not clear, and often does not flow logically or makes sense. No evidence that counter-arguments acknowledged. Accurately interprets some evidence and statements but some not interpreted incorrectly. Ignores or superficially evaluates obvious alternative points of view. Seldom explains reasons or justifies results.

e. **Organization:** Incoherent, lacks support for thesis, weak or no transitions.

f. **Mechanics:** Poor grammar, numerous spelling mistakes, little variety and complexity in sentence structure.

D. **The Failing Paper (C or below)**

Student fails to complete assignment or is turned in more than 5 days late. Writing is very difficult to understand owing to major problems with mechanics, structure, and analysis. Paper fails to uses sources appropriately or uses no scholarly sources, fails to relate evidence to thesis, and is generally incoherent. Paper is mostly strung together quotes with no analysis by the student.
NOTES ON READING JUDICIAL OPINIONS

This introduction to the reading opinions is designed to help you access, read, and analyze judicial opinions. This course does not assume you have ever seen a Supreme Court ruling before, or any other kind of legal decision for that matter. In the next few pages we will walk through the steps used to read and analyze virtually any legal opinion issued by any court. This process is sometimes referred to as briefing a case – a kind of systematic way to summarize an opinion. (This is different from another use of the term “briefing,” which refers to the preparation of the full formal written arguments submitted to the Court by the parties in the case.)

1. Understand the citation to the opinion. This is the way we identify opinions and find them as well as the way we refer to them in other materials. The citation consists of two parts: the case title and the reference. Consider, for example,


The title of the case [DeShaney v. Winnebago County Department of Social Services] is underlined or italicized as a proper title. It is made up of the names of the parties in the case. Thus, this was a case brought on behalf of Joshua DeShaney against the Winnebago County Department of Social Services. The name that appears first is that of the person or organization bringing the suit. Of course, this case came up through the court system to the U.S. Supreme Court, so the first name is the name of the party who petitioned to have the case heard on appeal. Not surprisingly, we call that person the petitioner. Just as logically, we call the party answering that petition the respondent. (It may seem complicated at first blush, but, as you can see, it is actually quite logical.)

The reference in a citation [489 U.S. 189 (1989)] indicates where the cited opinion may be found. It begins with the volume number in which the item is found. The initials abbreviate the name of the publication in which the item is printed. The second number indicates the page on which the case begins. Finally, the date in parentheses tells the reader the year in which the opinion was published. DeShaney then, may be found in Volume 489 of the United States Reports (the official reporter for the U.S. Supreme Court), beginning on page 189, decided in 1989. There are two other commonly cited, commercially produced series of books that also publish the opinions of the Supreme Court [L.Ed.2d – which stands for Lawyer’s Edition, Second Series – and S.Ct. – which stands for Supreme Court Reporter]. Do not worry about all of this complexity; the language from the opinion is the same in all three. Just use the U.S. citation.

While we are on the subject of citations, the citations for lower court opinions are a bit different, but the reason for this difference is also logical. Remember that there are three levels

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of federal courts: U.S. District Courts, the U.S. Circuit Courts of Appeals, and the U.S. Supreme Court (and a parallel structure in most states). Lower court rulings, such as the U.S. District Court for the District of Vermont or the U.S. Circuit Court of Appeals for the 9th Circuit (which covers the West Coast, Alaska, and Hawaii), are only binding within the area covered by those courts -- what we call their jurisdiction. So, in the reference part of the citation below, we include the volume number (20), the book in which the opinion appears (F.Supp.2d – which stands for the Federal Supplement, Second Series which reports the rulings of federal district courts), the page on which the opinion begins (675), and the date and court that issued the opinion (District Court for the District of Vermont issued in 1998).


This was an important case about the obligations of private schools as compared with the local school district with respect to student services under the Individuals with Disabilities Education Act (IDEA). St. Johnsbury Academy lost in the district court and took an appeal to the next higher level, which is the U.S. Circuit Court of Appeals for the 2nd Circuit. The Academy won at that level and the opinion was reported at volume 240 of the Federal Reporter, Third Series. [the Federal Reporter provides opinions of the U.S. Circuit Courts of Appeals] beginning on page 163, rendered by the U.S. Circuit Court for the Second Circuit in 2001.


The next level above the U.S. Circuit Court of Appeals is the U.S. Supreme Court. The St. Johnsbury case did not go to that last step.

Now let us turn back to how to think about the substance of an opinion.

2. **Get the facts.** Read to find out the story of the case. What happened that brought about the case in the first place? What is often called the fact pattern consists of the who, what, when, where, and why of the case. Be specific in your understanding (and, if you are writing a brief, in your description of the facts). Think of it chronologically. What happened from the earliest event to the current status in the Court? Do not begin a brief with “This case comes to the Supreme Court from the U.S. Circuit Court of Appeals. . . .” There were many things that happened to bring the case to its present point before it ever got anywhere near a court.

3. **Clarify the issues.** What is the issue (or issues) the Court was asked to resolve? The issues should be phrased in the form of questions. The easiest method (and perfectly adequate for non-lawyers) is to think of the issues as questions that can be answered with a simple “yes” or “no.” Do not simply ask whether a particular statute or activity is “constitutional” or “legal.” Consider which part of the Constitution or what law has allegedly been violated. For example, was the question about a violation of the due process of clause of the Fourteenth Amendment, did it concern the IDEA act, or did it perhaps present a claim about some other provision of law?
There may be more than one question in a given case. Keep the issues as clear and as simple as you can make them.

Sometimes the judges will be kind and lay out the issues clearly right at the beginning of the opinion. Unfortunately, that is not always true.

4. **What was the decision?** This section of a brief is nothing more than an answer to the question presented in the “issues” section. A simple ‘yes’ or ‘no’ answer is all you need. That will be adequate for most purposes.

   There are two other ways of thinking about the Court’s decision. One of these is to concentrate on what is termed the **“holding”** in the case, which means the legal principle announced by the Court that controlled the ruling in the case. The other commonly used term is the **“disposition”** of the case. That is, did the Court **affirm** the lower court ruling, **reverse** it, **remand** it (send it back for further proceedings), or **vacate** it (totally reject the case and the record supporting it to this point, requiring the parties to start over if they really want to proceed with the case)?

5. **What was the majority’s rationale?** This is the section of the opinion of greatest long-term value for most of us, most of the time. It tells us not merely what the Court decided, but why it came to that conclusion in this case and what it is likely to do in the future. The central feature of the rationale is the logic that took the Court from the legal premise where it began (whether it is a part of the Constitution or a piece of legislation) to whatever statement of the law it reached and the application of that interpretation to the facts of the present case. Of course, a description of logic is **not merely a listing of reasons** but an explanation as to the premise used by the Justice writing the opinion, and the reasoning by which he or she moved from premise to conclusion. Like most things in life, it takes a bit of practice to sort out what really matters amidst all of that language and what does not (what you will sometimes here referred to as *obiter dictum* or just *dicta* which means language not essential to the holding).

6. **What separate opinions were filed by members of the Court in the case?** The Supreme Court – or other courts with several members – decides case by majority vote. The author of the majority opinion tries to attract as many other members of the Court to agree with his or her opinion as possible. However, some justices may agree with the conclusion reached by the Court but disagree with the reasoning used by the majority to reach its conclusion. He or she may publish what is called a **concurring opinion**, explaining the basis for the disagreement. If there are justices who disagree with the Court’s conclusion in the case, they may file **dissenting opinions**, explaining their criticisms of the majority opinion. It is not necessary to spend too much time and effort on these opinions, but it is useful to read them and at least make a brief note about the basis for the disagreements.

   The reasons for noting the separate opinions are two. First, they help us to better understand the debate within the Court by emphasizing where there was agreement and disagreement. That gives us a better sense about how the Court might rule in the future. The second reason is that, over time, dissents or concurrences may be turned into the law by later
cases. For example, when the Supreme Court upheld racial segregation in 1896, only Justice Harlan dissented from the *Plessy v. Ferguson*, 163 U.S. 537 (1896) decision. However, his opinion was an important influence on many judges in the decades that followed and, in 1954, in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). *Plessy* was reversed and Harlan’s view vindicated.

What follows is a sample of a simple brief in one important U.S. Supreme Court case.
**Griswold v. Connecticut,**
381 U.S. 479 (1965)

FACTS: The Connecticut Planned Parenthood organization opened a family planning clinic at which contraceptives and information concerning birth control were provided. A Connecticut criminal statute prohibited the use of contraceptives or counseling someone to use them. The clinic provided birth control counseling to a married couple. The Director of Planned Parenthood was convicted and fined under the statute.

ISSUE: (1) Does the Constitution provide a right to privacy which is applied to the state through the due process clause of the Fourteenth Amendment?

(2) Does a statute that punishes the counseling of married couples to use contraceptives violate the right to privacy applied to the states through the due process clause of the Fourteenth Amendment?

DECISION: Yes
Yes

RATIONALE: (Douglas) The Court has recognized a number of rights not specifically mentioned in the Constitution. These include the right to marry and raise children, the freedom of association and privacy in those associations, and a number of implied related rights under the freedoms of speech and press. The right to privacy is an implied right, based in freedom of association protected by the First Amendment and is also supported by the Third, Fourth, Fifth, Ninth, and Fourteenth Amendments. Decisions regarding the right to bear children are some of the most intensely private matters involving the family, the most basic unit of association. Government actions touching upon those decisions must serve compelling interests and the means chosen to enforce those ends may not “sweep unnecessarily broad.” The Connecticut restrictions do not meet either part of this test.

CONCURRING: (Goldberg) The Ninth Amendment is the appropriate constitutional provision for protection of the right to privacy.

(Harlan) There is a right to privacy of the sort described by the Court, but it stems from the concept of liberty protected by the due process clause of the Fourteenth Amendment and not specific Bill of Rights guarantees.

(White) A law of this sort is not "reasonably necessary for the effectuation of a legitimate and substantial end."

DISSENTING: (Black) There is no specific constitutional language which supports a right to privacy and he is not willing to read either the Bill of Rights or the due process clause so broadly as to create one.

(Stewart) Though this is a “silly law,” it is for the legislature to remove it from the books, not the Court.