

Book Notes

ADMINISTRATIVE LAW: PRINCIPLES AND PRACTICE, by John H. Reese, West Publishing Company, 1995, One Hardbound Volume, 835 pages, \$43.95

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Administrative law is among the most important legal fields for the transportation practitioner.¹ By necessity, the representation of clients who participate in a regulated industry involves extensive interaction with administrative agencies. Some of these interactions may later involve the utilization of the judicial process; but for the bulk of administrative matters, the agency will be the final forum for asserting one's client's position. This fact makes administrative practice a uniquely challenging form of advocacy in the legal profession. It also makes administrative law a difficult subject to teach effectively in a law school setting.

In his new course book, Professor John H. Reese, of the University of Denver College of Law, attempts to alleviate the difficulties with teaching administrative law in a traditional law school curriculum. Using modern "adult learning theory" techniques, Professor Reese has developed a course book that appears capable of educating students about the unique nature of administrative law.

The text is properly called a "course book" rather than a casebook. While it contains substantial excerpts from over seventy-five major cases, a significant portion of the book is devoted to textual material. These materials suggest how students should analyze particular cases or statutory provisions. The text uses a variety of models designed to prepare

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Mr. Brooks worked as a research assistant to Professor Reese in the later stages of the course book's development. He was one of several students assigned to survey state APAs for inclusion in the text. Through this experience Mr. Brooks was able to thoroughly familiarize himself with the pedagogical approach taken by Professor Reese in this text.

1. See Martin Steinmetz, et. al., *The Transportation Law Education Study*, 22 *TRANSP. L.J.* 133, 149-50 (1994) (noting that 42% of the transportation practitioners surveyed ranked administrative law as first or second most important substantive legal fields in their practice).

students to analyze administrative problems independently. This technique is useful in stimulating classroom learning. Simultaneously, it helps prepare students for the kind of analysis they must perform in practice when confronted with an administrative law issue.

The text is designed to track the federal Administrative Procedure Act [hereinafter "APA"] in substantially the same order as sections of the Act are codified in the U.S. Code. At the beginning of each section of the text, Professor Reese quotes relevant sections of the APA. These statutory excerpts are followed by cases or text designed to help the student understand the meaning of the sections, while flushing out statutory ambiguities. At the end of each section, Professor Reese cites the administrative procedure statutes of the ten most populous states in a brief survey format. While space constraints would preclude detailed analysis of state law provisions, Professor Reese's general discussion of the differences between state APAs and the federal APA helps remind students that the models for analysis provided throughout the book apply to state administrative problems. These references to state APA materials provide a unique opportunity for instructors to compare and contrast the federal APA with other possible approaches to administrative law problems.

Professor Reese divided the book into fourteen chapters of varying length. The first chapter provides an introduction to the field of administrative law. The primary goal of this chapter seems to be showing that the approaches students have learned for examining other legal subjects may not be well suited to the learning of administrative law. The chapter identifies a range of primary sources of law in the field to show how limited a role the judicial system plays in administrative law. Professor Reese seeks to introduce students to agencies' non-judicial authority by reference to a variety of Supreme Court cases involving separation of powers. Throughout this chapter, and indeed throughout the text, Professor Reese uses simple diagrams and other visual symbols to illustrate key points. In Chapter One, Professor Reese employs these primarily to show the separation and blending of various powers within an administrative agency.

Chapter Two provides a more detailed introduction to the APA. It also introduces and briefly describes the various public information and open meeting statutes that affect the administrative process. The Freedom of Information Act [hereinafter "FOIA"], controlling the release of agency documents to the public, is the most heavily litigated component of the APA. Because of its complexity and the broad range of issues litigated, it is among the more difficult administrative law topics to teach. Professor Reese does not attempt to provide a comprehensive treatment of FOIA. Rather, he outlines the essential ideas and refers students to

other sources for more in-depth coverage of FOIA. In his teachers' manual, Professor Reese suggests that instructors supplement this section of the book with other materials as they see fit.

The third chapter is entitled "Agency Administration of its Legislative Program." This chapter surveys the various alternatives an agency has in pursuing its mission, given that many administrative agencies have broad discretion in the means chosen to implement their programs. These include rulemaking and policy making through adjudication. The chapter examines the internal and external factors influencing agency choices of means. It includes a lengthy analysis of the circumstances in which a court may compel an agency to choose a particular mode for asserting its authority. Professor Reese ends this chapter by examining the constitutional ramifications of the agency's choice of modes. Specifically, Professor Reese contrasts legislative-type acts with adjudicative acts in light of the requirements imposed by the Due Process Clauses of the Fifth and Fourteenth Amendments.

Chapters Four and Five examine the procedural requirements for rulemaking and adjudication, respectively, on the federal level. The analysis here emphasizes the statutory language of the APA, using cases to further flush out the meaning of particular sections of the APA. Chapter Four uses a full page flow chart to show the linkages between the various APA provisions dealing with rulemaking. Chapter Five contains a similar flow chart for agency adjudications. In both chapters, the difference between formal and informal proceedings is emphasized. Professor Reese takes great pains to explain how it is determined that formal procedures should be used to make a rule or adjudicate an agency dispute. In raising the issue formal procedures, Professor Reese sets the stage for the discussion of the rights of persons before agencies and the specific procedural requirements for formal proceedings. These topics make up a large part of the remaining chapters.

Chapters Six and Seven deal with procedural rights in administrative proceedings. Chapter Six focuses on the procedural rights bestowed by the APA and FOIA. Chapter Seven provides an extensive analysis of the due process and equal protection limitations on agency actions. Professor Reese's analysis of due process case law is as comprehensive as that provided in any major constitutional law casebook in print. The case excerpts here are numerous and lengthy. The author uses textual notes between cases to explain how the cases fit together and how they can be used effectively to challenge administrative action. The examination of due process is largely confined to the analysis of two basic questions: whether due process protections apply in a particular situation, and if so, what process is due. All of the cases in this chapter are organized around these two issues.

Chapters Eight and Nine focus on the formal procedures used by agencies in some circumstances. These procedures were first introduced in the fourth and fifth chapters. Formal hearings under the APA are the subject of Chapter Eight. Chapter Nine serves to further analyze the decision process in formal proceedings. It deals with a variety of related matters that are not components of agency hearings but are nonetheless parts of formal agency decision making.

Chapter Ten is a kind of APA catchall. It provides a brief textual analysis of a variety of APA sections not already covered. Licensing, negotiated rulemaking, alternative dispute resolution, and regulatory flexibility are among the key topics here.

Chapters Eleven through Fourteen contain materials on judicial review of agency actions. Of these chapters, Twelve and Fourteen stand out. Chapter Twelve provides an extensive and scholarly analysis of the difficult subject of standing to seek judicial review of agency actions. Covering the same territory as many constitutional law or federal jurisdiction casebooks, this chapter includes a series of conceptual models which serve to explain and, to the extent possible, reconcile a confusing body of Supreme Court standing cases. The models provide a structure that allows students to identify possible standing problems in a given case and suggest possible methods for overcoming these difficulties. The models suggested by Professor Reese consist of the following: "pure" standing questions under Article III of the Constitution, standing arising under Article III and some form of agency organic legislation, standing arising by virtue of the interaction of a "relevant" statute and § 706 of the APA, prudential limitations on standing (i.e., generalized grievances, taxpayer standing, "zone of interest" analysis, third party standings etc.), and state created standing.

Chapter Fourteen discusses the scope of judicial review. At 129 pages, it is the longest chapter in the book. The extensive analysis provided in the chapter is well organized and thorough. However, the length of the judicial review chapter seems to betray the main emphasis of the course book, that administrative law teaching should seek to de-emphasize the role of the courts. Nevertheless, much of Professor Reese's most insightful analysis may be found in this chapter. Particularly his treatment of *Chevron, U.S.A. v. Natural Resources Defense Council, Inc.*² which expanded the scope of judicial review of legal questions, is unique among administrative law casebooks. This same detailed analysis carries over into a later section dealing with review of agency factual findings.

Throughout the book, Professor Reese keeps well in mind that the intended audience is the law student and not other legal scholars. Thus,

2. 467 U.S. 837 (1984).

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he generally resists the temptation to use the book as a platform for raising academic arguments against other legal scholars. His references to secondary source materials are generally limited to cites to the Attorney General's manual on the APA and various comments by the Administrative Conference of the United States. This reserves more space for primary source material and explanations of the basic models for analysis of administrative materials. Professor Reese's ADMINISTRATIVE LAW: PRINCIPLES AND PRACTICE should fill a void in current administrative law teaching and may ultimately assist the bar in preparing the next generation of attorneys to deal competently with administrative law problems in practice.