



**POLSC 607 Administrative Law**  
Kansas State University (Spring 2015)  
Waters Hall 328, M 5:30-8:20

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Hours: T 9:00-11:00am, W 8:30-10:00am, 2:30-4:30pm, U 1:00-3:00pm, or by appointment

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**Introduction:** Administrative law is a relatively new field of law within our political system and its development parallels the growth of the administrative state. Congress and state governments have delegated substantial law-making (regulatory) and order-making (adjudicatory) power to federal and state bureaucracies. In general, administrative law deals with: (1) how power is transferred from legislative bodies to administrative agencies; (2) how administrative agencies use both formal and discretionary power; and (3) how the actions taken by administrative agencies are reviewed by the courts. Simply stated, administrative law regulates society and regulates the regulators. More specifically, administrative law is concerned with the procedural problems of *fairness* and *due process* in governmental decision making. In the words of former Supreme Court Justice Robert H. Jackson, “procedural fairness and regularity are of the indispensable essence of liberty.”

The U.S. Constitution mentions due process in both the Fifth and Fourteenth Amendments but the phrase is not defined. Legislative enactments, such as the Administrative Procedure Act, have given some meaning to the concept of due process. However, the most authoritative insights on what fair procedure should entail have come from major federal court decisions. In fact, over ninety percent of administrative law is judge-made common law. Given the role of the courts in defining procedural fairness, it is worthwhile to examine some of the significant administrative law cases. Each decision embodies theories and arguments about fairness, equality, democracy and other values in the relationship between citizens and government. By evaluating the wisdom of these positions, we can arrive at a better understanding of the politics of administrative law.

**Course Description:** This course is a general introduction to administrative law in the American political system. Topics covered include the constitutional framework of the administrative state, the rule-making, adjudicatory, and enforcement functions of administrative agencies, judicial review of agency actions, the requirements of procedural fairness, official and governmental liability, administrative searches, and the rights of public employees. Our focus will be on federal administrative agencies, but there will be some discussion of state administrative law as well. The course has several learning objectives:

- a) *define* administrative law and *explain* why it is an important part of our political system
- b) *understand* the character and scope of administrative regulations
- c) *examine* current issues and practical problems in administrative law
- d) *understand* the role of the courts in the development of administrative law
- e) *evaluate* the effectiveness of administrative law in promoting fairness, equality, order and other values
- f) *promote* critical thinking and *improve* verbal and written communication skills

These objectives will be accomplished through textbook readings, paper projects, and discussion of administrative law cases and current events. We will apply a systems model to promote an understanding of the politics of administrative law. The systems model places administrative law in the context of many different environmental pressures that influence agency decisions.

Required Texts:

Curry, Lynne. *The DeShaney Case: Child Abuse, Family Rights, and the Dilemma of State Intervention*. University Press of Kansas (2007).

Warren, Kenneth F. *Administrative Law in the Political System*, Fifth Edition. Westview Press (2011).

Recommended Texts:

Arnold, Jason Ross. *Secrecy in the Sunshine Era: The Promise and Failures of U.S. Open Government Laws*. University Press of Kansas (2014).

Cooper, Phillip J. *The War against Regulation*. University Press of Kansas (2009).

Fritschler, A. Lee, and Catherine E. Rudder. *Smoking and Politics: Bureaucracy-Centered Policymaking*. 6<sup>th</sup> Edition. Pearson Publishing (2006).

Glennon, Michael. *National Security and Double Government*. Oxford University Press (2014).

Goodsell, Charles T. *The New Case for Bureaucracy*. Congressional Quarterly Press (2015).

Mashaw, Gerry L. *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law*. Yale University Press (2012).

Sunstein, Cass. *Valuing Life: Humanizing the Regulatory State*. University of Chicago Press (2014).

Note: Graduate students are expected to purchase and read only one of the recommended texts.

Book Reviews: Both undergraduate and graduate students are responsible for writing a critical review of *The DeShaney Case*, by Lynne Curry. Graduate students must write a second review of any *one* of the recommended readings. The second review may be submitted at any point during the semester. The purpose of this assignment is to develop your understanding of a particular topic within administrative law and to improve your critical thinking and writing skills. Begin reading these books several weeks before the due date of the papers in order to give yourself enough time to write a thoughtful review. The review should conform to the substantive and stylistic requirements described in Appendix A.

Short Papers: Both undergraduate and graduate students will write two short (about 3 pages) critical thinking or case analysis papers based on assignments described in the syllabus. Each paper is worth 50 points. The paper projects are described in the topic sections of the course schedule. Select any two of the five assignments but *everyone must complete at least one paper by spring break*. These papers should be typed, double-spaced with one-inch margins. Papers are due on the date listed in bold font.

Graduate Students: Because expectations are higher for graduate students, extra work is required. Graduate students must complete an 8-10 page research paper on an issue or problem within administrative law. The paper should define the problem, examine the legal issues, review the literature, and if possible, analyze the problem using the systems model. The paper is worth 100 points. On May 4th, you will be required to make a short (10-12 minutes) presentation of the paper in class using handouts, Power Point slides, video, etc. The presentation is worth 40 points. The papers should be typed, with one-inch margins, title page, citations, and bibliography.

Topics may be drawn from any of the material covered in class or current events. For example, possible paper topics include the merits of state agencies drug testing welfare and unemployment benefit recipients, president Obama's administrative reorganization, the attacks on public employee collective bargaining rights, EPA attempts to regulate hydraulic fracturing or "fracking," restricting public employee speech on social media, the challenges of open government in a post-9/11 world, regulating "fleeting expletives" in radio and television, FDA food labeling of nutrition content or GMOs, whistleblowers and government accountability, or President Obama's executive order on immigration. Graduate students should submit a title, description, and five sources by March 9.

Participation: The format of the course emphasizes class discussion and participation is an important component of student performance. Participation is worth 80 points toward your final grade and that can

mean the difference if a student is between grades at the end of the semester. Participation means regular class attendance AND contribution to class discussion on a regular basis with effective comments. Because we meet only once a week, missing one class is the equivalent of being absent for three classes. Participation also means submitting assignments on time and postings on the message boards. Students who satisfy these requirements can expect to receive high marks for participation at the end of the semester.

Exams: There will be two regular exams plus a final exam. Dates are given in the accompanying Course Outline. The exams will consist of multiple choice and essay questions. The final exam will include a couple of questions that are cumulative in nature. My standards for grading the essays are explained below. You should read them carefully so that we can avoid problems later. A study guide will be handed out before each exam. Keep in mind that study questions are not a substitute for attending class and completing the reading assignments. If there is a problem with an exam date, it should be discussed with me prior to the date of the exam. Makeup exams will be granted only for absences that are recognized as valid by the University.

Written documentation is required. Students who do not have a valid excuse or who fail to take the makeup exam will receive a grade of "zero." You are expected to abide by the rules governing academic integrity and conduct under the K-State Honor Code as described on page 9 of the syllabus. For more information on the Honor Code see the Undergraduate Catalog or visit the Honor Council's website at:

<http://www.ksu.edu/honor>

Grading Criteria for Essays: Some students feel that the grading of essay exams is a mysterious and inherently biased process. As your instructor, I will make every effort to explain my grading criteria and to be as objective as possible. It is your responsibility to prepare for the exams. Grading essay exams cannot be reduced to a science. The process involves more than searching for "key" words. Here are some of the things that I look for:

An "A" answer covers all the points asked within the question and then some. It provides clear, detailed explanations and uses examples to support the essay. It incorporates both reading and lecture materials into the essay. Above all, the answer shows a conceptual understanding of the material. A "B" answer covers all the points asked within the question. It provides clear explanations and examples and displays knowledge of the reading and lecture material.

A "C" answer generally covers all the points asked for in the question. It is basically a rehash of the lecture notes with little detail or explanation. A "D" answer fails to cover all the points required by the question. It does not demonstrate understanding of the reading or lecture material. Arguments are made with little or no supporting evidence. An "F" answer fails to cover any of the points required by the question. It is evident that the student has made no effort to prepare for the exam, read the text, or attend class.

A study guide will be passed out one week before each exam. Stop by during office hours to discuss any of the material. I grade along the following point system: 100-90=A; 89-80=B; 79-70=C; 69-60=D; 59 and below=F. Final grades are based on total point accumulations.

Evaluation: Your grade will be based on the following criteria:

Exam 1 = 100 points

Exam 2 = 100 points

Final Exam = 120 points

Book Reviews = 100 points (undergraduate) 200 points (graduate)

Short Papers = 100 points

Research Papers = 100 points and Presentation = 40 points (Graduate Students Only)

Participation = 80 points

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Total = 600 points (Undergraduates) 840 points (Graduates)

Course Outline:

## **January 26**

### **Introduction, Syllabus, Class Requirements**

Readings: course syllabus, K-State Canvas features

### **Administrative Law in the American System**

Warren, Chapter One, pp. 1-23

Study Questions: What is administrative law? What are the differences between the "purist" and "nonpurist" perspectives in administrative law? What makes the administrative law field distinct from other areas of law? How can systems analysis help us understand the role of administrative law in our political system? Who are our public administrators and what role do they play in our political system? What are the basic types of public agencies?

## **February 2**

### **The Growth of Administrative Power**

Warren, Chapter Two, pp. 23-75

Study Questions: Why have administrative agencies increased in size and number? Why would Congress want to delegate some of its lawmaking power? How much power should be delegated to administrative agencies? Do administrators possess too much power? What is the non-delegation doctrine? Should the non-delegation doctrine be revived? What problems does sub-delegation of authority create? Is it possible to define the public interest? What criticisms have been made of the administrative system? Have democratic ideals been threatened by the emergence of the modern democratic state?

## **February 9**

### **Regulating in the Public Interest: Regulation v. Deregulation**

Warren, Chapter Two, pp. 75-103

*Whitman v. American Trucking Association*, 531 U.S. 457 (2001)

Study Questions: What is governmental regulation and what are the primary goals of regulators? What arguments have been made in defense of regulation? Is there too much regulation? What criteria should we use to determine if there is too much regulation? What impact has deregulation had on the airline industry? If we return more discretionary authority to administrators, how can we ensure that they will not abuse that authority?

Paper Assignment – Critical Analysis: Go to the “Government is Good” website at:

[www.governmentisgood.com](http://www.governmentisgood.com). You will quickly notice that the site is an unabashedly pro-government and anti-conservative website. If you are conservative or libertarian you will not like what you see there but try to keep an open mind in completing this assignment. You will have an opportunity to offer a critique. On the left margin of the page access and read the essays on “The Case for Bureaucracy” and “Why We Need More Government.” According to Professor Douglas Amy (yes, Amy is his last name), what are the advantages or benefits of bureaucracy and more government regulation? Are you convinced that bureaucracy is good and that we need more regulation in our society? Or do you think that Professor Amy downplays or ignores some of the criticisms of bureaucracy and regulation? Briefly discuss. This paper is due **Monday, February 9**.

## **February 16**

### **Democratic Accountability in the Administrative Process: Legislative Oversight**

Warren, Chapter Three, pp. 105-128

*Board of County Commissioners v. Umbehr*, 518 U.S. 712 (1996)

Study Questions: What oversight powers does Congress possess? How effective is Congress in overseeing public agencies and keeping administrators democratically responsible? Has the Administrative Procedure Act been effective in guiding and controlling administrative behavior? How are the political activities of public employees restricted?

Paper Assignment – Case Analysis: Find the case of *Board of County Commissioners v. Umbehr* (1996) on Lexis-Nexis or some other legal search engine. In a three-page paper, summarize the facts of the case and identify the legal issue. Discuss the holding of the Court and the arguments used to support the opinion. Do you agree with the majority that free speech protections should be granted to government contract employees or do you think that the dissent makes a stronger argument? How important is this decision in an era of privatization of government services? Briefly discuss. This paper is due **Monday, February 16**.

### **Democratic Accountability: FOIA, APA, Sunshine and Sunset Legislation**

Warren, Chapter Three, pp. 128-156

*Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990)

Study Questions: How effective has the Freedom of Information Act been in opening the "doors" on agency operations? What problems, if any, has the Privacy Act created for those using the FOIA to obtain information? Has the Sunshine Act helped democratize agency decision making? Is the international trend toward more open government or secrecy? What has the Obama administration done to make the federal government more transparent?

### **February 23 EXAM #1**

### **March 2**

### **Protecting Administrators from Undue Interference and Harassment**

Warren, Chapter Four, pp. 157-193

*Wiener v. United States*, 357 U.S. 349 (1958)

Study Questions: What are conflicts of interest? How effective has the law been in regulating conflicts of interest? What are the limitations of the Speech or Debate Clause? What powers does the president possess to appoint and remove administrative officials? What is the controversy over recess appointments?

### **March 9**

### **Rule-Making: Agencies as Legislative Bodies**

Warren, Chapter Five, pp. 195-237

*Motor Vehicle Manufacturers Association v. State Farm Mutual*, 463 U.S. 29 (1983)

Research topics for graduate papers due

Study Questions: What is rule-making? How fair and democratic is the rule-making process? What did President Reagan do to increase executive authority over agency rule-making? Why is the *State Farm* ruling considered to be one of the most important rule-making decisions ever handed down?

Paper Assignment — Active Learning: Go to the following website: <http://www.regulations.gov/#!home> This is an official government site that allows citizens to comment on proposed federal regulations. Use a search engine to find a proposed regulation on a topic that you find interesting. Read the proposed regulation and the link for "Commenter's Checklist." Prepare and submit a comment on the regulation. In a 3-page paper, identify the agency considering the rule, summarize the proposed regulation, explain why you chose that topic, and provide documentation of your comment. This paper is due **March 9**.

## **Between Rule Making and Order-Making**

Warren, Chapter Six, pp. 239-255

*National Labor Relations Board v. Bell Aerospace Company*, 416 U.S. 267 (1974)

Study Questions: What are the differences between agency hearings and court trials? What are the differences between rule-making and order-making? Why is Kenneth Davis opposed to order-making as a method for promulgating public policies?

**SPRING BREAK** (March 16-20)

### **March 23**

#### **Agency Hearings: How Fair Are They?**

Warren, Chapter 7, pp. 257-311

*State of California v. FERC*, 329 F.3d 700 (9<sup>th</sup> Cir. 2003)

*Goldberg v. Kelly*, 397 U.S. 254 (1970)

Study Questions: According to statutory requirements and court decisions, what are the minimum procedural due process rights which should be accorded all persons today in agency hearings? What contribution did *Mathews v. Eldridge* (1976) make to due process requirements in agency hearings? How independent are administrative law judges?

Paper Assignment – Case Analysis: Find and read the Supreme Court’s opinion in *Goldberg v. Kelly* (1970). Describe the facts of the case and the opinions of the Court. What ingredients of an administrative hearing were announced in *Goldberg*? When must that hearing be provided? Did the Court hold that this combination of ingredients must be provided in every situation in which a person’s property is adversely affected by government action? What interests or values might be served by trial-type hearings? Are there any disadvantages to trial-type hearings that should be weighed against the advantages? Briefly discuss. This paper is due on **Monday, March 23**.

### **March 30 EXAM #2**

### **April 6**

#### **Administering Public Policies: Discretionary Agency Actions**

Warren, Chapter Eight, pp. 313-344, 355-368

Orwell, *Shooting an Elephant* (posted online)

*FCC v. Fox Television Stations*, 129 S.Ct. 1800 (2009)

Study Questions: What is formal administrative discretion and what constitutes informal administrative discretion? How should we control administrative discretion? What lessons can be learned about discretion from Joel Samaha’s historical account? Do you agree with his conclusion about the inevitable role discretion must play? How does Kenneth Davis approach the issue of administrative discretion? Why has the *Vermont Yankee* decision been criticized by so many administrative law scholars?

Paper Assignment – Critical Analysis: Find George Orwell’s short story, “Shooting an Elephant,” in our online module and read the story. In a 3-page paper, use our textbook to define administrative discretion and identify the four stages in the ideal exercise of discretion in solving an administrative problem (pp. 315-317). Why is the ideal model grossly complicated in reality? Applying the model to the administrative problem facing the colonial police officer in Orwell’s short story, discuss whether you believe the officer used his discretion properly. Did he have any problems discovering the facts? Was it necessary to use deadly force? How was the officer influenced by his working environment? Was the law applied properly? What, if

anything, does this story teach us about administrative discretion? Briefly discuss. This paper is due **Monday, April 6.**

### **April 13**

#### **Nontraditional Alternatives to Controlling Administrative Power**

Warren, Chapter Eight, pp. 344-355

Study Questions: Are ombudsmen and whistleblowers effective tools for protecting citizens against the arbitrary use of administrative power? What protections do whistleblowers have against retaliation for calling attention to abuses of administrative power?

#### **Judicial Review of Agency Behavior**

Warren, Chapter Nine, pp. 369-418

*United States v. Mead Corporation*, 533 U.S. 218 (2001)

Study Questions: Should judges play an active or passive role in reviewing administrative decisions? What is reviewable administrative action? What are the obstacles to judicial review of agency action? What are the differences between reviewability and scope of review?

### **April 20**

#### **Suing the Government and Its Administrators**

Warren, Chapter Ten, pp. 419-472

Curry, *The DeShaney Case* (Book Review Due April 20)

*DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 188 (1989)

*Jones v. Byrnes*, 24476 (6<sup>th</sup> Cir. 2009)

Study Questions: What are the pros and cons of the sovereign immunity doctrine from the perspective of government, society, and those harmed by government's tortious actions? What are the differences between *governmental* and *official* immunity? Why are we moving away from officer liability and toward government liability? What impact have Section 1983 suits had on official conduct and governments, especially municipalities? How immune is the President of the United States from tort liability suits?

### **April 27**

#### **Balancing Societal and Individual Rights**

Warren, Chapter Eleven, pp. 473-550

*Board of Education v. Earls*, 536 U.S. 822 (2002)

*Safford Unified School District #1 v. Redding* 557 U.S. 364 (2009)

Study Questions: How was legal formalism used to hold back the growth of the administrative state and how has legal realism been employed to encourage its rapid growth? According to court rulings, under what conditions are administrative search warrants required and not required when administrative searches are conducted? How has legal realism eroded the Fifth Amendment protection against self-incrimination? In fighting the War on Terrorism, should we permit increasingly bolder and invasive searches and seizures? What impact has the Patriot Act had on searches, seizures, and detentions? How much power should school administrators have to search students?

Paper Assignment – Case Analysis: Supreme Court decisions over the past twenty years have severely limited Fourth Amendment protections that citizens have in the context of administrative searches. Find and read the opinions in *Board of Education v. Earls* using Lexis-Nexis or another legal search engine.

Summarize the facts and the opinions in the case. How convincing is Justice Thomas's view of administrative searches and student privacy? Do you agree with the dissenters that this case is different from *Vernonia*? How cost-effective do you think it is to test for drug use among virtually all students in a school system when the percentage of students actually using drugs is very low? If the "special needs" of schools are so important, should we impose mandatory testing on every student? Briefly discuss. This paper is due on **Monday, April 27**.

**May 4 Graduate Student Research Presentations**

**May 11 FINAL EXAM (6:20-8:10pm)**

**Important Dates:**

February 23: Exam #1

March 9: Research topics for graduate papers

March 16-20: Spring Break

March 30: Exam #2

April 20: *The DeShaney Case* book review due

May 4: Graduate student presentations

May 11: Final Exam

## **University Policies:**

### **Statement Regarding Academic Honesty**

Kansas State University has an Honor System based on personal integrity, which is presumed to be sufficient assurance in academic matters one's work is performed honestly and without unauthorized assistance. Undergraduate and graduate students, by registration, acknowledge the jurisdiction of the Honor System. The policies and procedures of the Honor System apply to all full and part-time students enrolled in undergraduate and graduate courses on-campus, off-campus, and via distance learning. The honor system website can be reach via the following URL: [www.ksu.edu/honor](http://www.ksu.edu/honor).

A component vital to the Honor System is the inclusion of the Honor Pledge which applies to all assignments, examinations, or other course work undertaken by students. The Honor Pledge is implied, whether or not it is stated: "On my honor, as a student, I have neither given nor received unauthorized aid on this academic work." A grade of XF can result from a breach of academic honesty. The F indicates failure in the course; the X indicates the reason is an Honor Pledge violation.

### **Statements for Academic Accommodations for Students with Disabilities**

Any student with a disability that needs a classroom accommodation, access to technology or other assistance in this course should contact Disability Support Services and/or their instructor as early as possible.

### **Statement Defining Expectations for Classroom Conduct**

All student activities in the University, including this course, are governed by the Student Judicial Conduct Code as outlined in the Student Government Association By Laws, Article VI, Section 3, number 2. Students that engage in behavior that disrupts the learning environment may be asked to leave the class.

### **Academic Freedom Statement**

Kansas State University is a community of students, faculty, and staff who work together to discover new knowledge, create new ideas, and share the results of their scholarly inquiry with the wider public. Although new ideas or research results may be controversial or challenge established views, the health and growth of any society requires frank intellectual exchange. Academic freedom protects this type of free exchange and is thus essential to any university's mission.

Moreover, academic freedom supports collaborative work in the pursuit of truth and the dissemination of knowledge in an environment of inquiry, respectful debate, and professionalism. Academic freedom is not limited to the classroom or to scientific and scholarly research, but extends to the life of the university as well as to larger social and political questions. It is the right and responsibility of the university community to engage with such issues.

## Appendix A: Book Reviews

Each student is responsible for writing a critical review of *The DeShaney Case*, by Lynne Curry. Graduate students must write a second review of any of the recommended texts. Although there will be some variation, the reviews should conform to the following substantive and stylistic requirements:

### **Substantive Requirements**

1. *Theory/Conceptual Framework*: Where does the author place the book in terms of previous work in the field? What is/are the basic research issue(s) or argument(s)? How does the author explain the phenomenon to be studied?
2. *Method*: What method does the author use to examine the hypothesis or proposition? For example, does the author use case studies, a systems model, statistical analysis, personal observation, historical analysis, or some other method?
3. *Findings*: Briefly review the author's findings, analysis, and conclusions. Avoid a chapter-by-chapter summary. Focus on central arguments and topics. For example, what does the *DeShaney* case teach us about government liability?
4. *Critique*: This is the most difficult but also the most important part of your paper. What theoretical, operational, or other methodological shortcomings, if any, can be identified? How do the findings change or add to what is already known about this topic? What does the author have to say about administrative law? Are the arguments convincing? Does the author offer reform proposals and do you agree with the proposals? Do the author's conclusions comport with other lecture and reading material in this class? Did you learn anything about administrative law and politics by reading this book?

### **Stylistic Requirements**

Your paper should be written in an essay format, not as an outline in response to the questions listed above. The paper should contain a title page with your name, class, and date. Papers must be typed, double-spaced, with one-inch margins. The paper should be about 5-6 pages long with correct grammar and spelling. References to the text may be included in the body of the paper using parentheses (Curry, p. 45). One or two sentence quotations from the text should be "enclosed in quotation marks" and followed with a page reference. Longer quotations should be blocked and properly cited. The *DeShaney* book review is due on April 20<sup>th</sup>. Papers received after that date will be penalized. The second review for graduate students may be submitted at any time during the semester with a final deadline of May 11th.

## Appendix B: Guide to Briefing Cases

This course does not use a case method approach to studying administrative law but we will be discussing numerous Supreme Court and circuit court decisions. It might be helpful to brief the major cases that we discuss. A student brief is an analytical outline of a Supreme Court opinion designed to pinpoint what issues of fact and law are relevant to the final resolution of the case and what arguments the justices have used. Provided below are some guidelines on how to brief a case.

**1. Title, Citation, Year:** The party listed first is seeking reversal of an unfavorable lower court decision. The second party wants the decision affirmed. The first party is called the appellant or petitioner and the second party is called the appellee or respondent.

**2. Facts of a Case:** In almost all cases, the facts are established by testimony at the trial court level. Each term, the Supreme Court will hear a few cases under its original jurisdiction which means that the Court is the first forum for the case. In order to establish a factual record, the Court will appoint a special master to conduct hearings between the two parties. Appellate courts address legal questions, not factual ones. Justices, however, may differ in interpreting the facts of a case. The majority opinion usually summarizes the facts before elaborating the decision. In addition to the facts immediately relevant to the decision, the broader social, political, and economic setting should be taken into account. The parties to a case are real people or organizations and they frequently represent powerful interests in society.

**3. Law/Legal Questions:** It is important to identify the Constitutional provisions that are at issue in the case. There may also be statutes and administrative regulations that raise Constitutional issues. In addition, Supreme Court precedents may be relevant. All of these laws should be identified. It may take some practice to sort out the legal questions involved in a particular dispute. Sometimes the Court opinion will describe the legal issues while other cases may require a close reading of the opinion. Once you have identified the legal issue(s), try to frame them in a yes or no format. This will make it easier to summarize the majority opinion.

**4. Opinion of the Court:** The majority opinion announces the Court's decision and supplies justifications for the ruling. Try to trace how the Court arrived at its answers to the legal questions formulated above. A justice may have used arguments from precedent, appeals to the common sense, the "plain meaning" of the words of the law, the intent of the Framers, historical experience, logic, political philosophy, or a combination of these and other arguments. Identify the legal doctrines announced by the Court. This is not always an easy task because you must be able to sift opinion and ruling from dicta or obiter dictum (remarks and observations that are not essential to the determination of law). Only the ruling is legally binding.

**5. Concurring Opinion:** Members of the Court majority may write a separate opinion that agrees with the Court decision but not its justification. A Justice may wish to clarify his or her own view of the case or respond to a dissenting opinion. Concurring opinions were rare during the tenure of Chief Justice Marshall because he forged (some would say imposed) a consensus among the Justices. Concurring opinions are more prevalent on the modern Court, especially when the Court is divided politically.

**6. Dissenting Opinion:** Dissents are written to explain why the minority (one to four Justices) feels that the Court decision is wrong. Dissents usually identify areas of disagreement. It is important to note the arguments of dissenting opinions because those arguments may influence a Court majority in future cases.

**7. Evaluation:** This is often the most difficult but also the most important part of your brief. In analyzing the decision of the Court, ask yourself the following questions: Is the opinion convincing? Is the decision consistent with previous decisions? Does the Court depart from precedent? What method(s) of interpretation was/were used to arrive at the decision? What impact did the decision have for society? For example, did the decision strengthen the power of the federal agencies or weaken them? Did the Court enhance or diminish due process protections?