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### Book Review. Gelhorn, W. and C. Byse, Administrative Law, Cases and Comments

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# BOOKS

## REVIEWED

**ADMINISTRATIVE LAW, CASES AND COMMENTS.** By Walter Gellhorn and Clark Byse. Brooklyn: Foundation Press, Inc., 1954. Pp. xci, 1273. \$9.00.

This impressive volume, successor to Professor Gellhorn's two previous editions of his work bearing the same title (the second of which was published in 1947), embodies a drastic re-editing and rewriting. Many cases included in the former work have been reduced to a reference or a brief summary; much new text has been written; many new cases have been introduced; and the arrangement of the material into chapters has been considerably altered. This work, in short, reflects fully the developments that have occurred in the Federal administrative system since the enactment of the Administrative Procedure Act of 1946; and it takes account of a large quantity of critical writing and of decisions by state courts during the same period.

Professor Gellhorn's previous book has been known as a source book for advanced students and practitioners, not less than as a teaching tool, ever since the publication of the first edition. The qualities that gave rise to this reputation have not been lost in the new volume. The number of cases dealt with remains enormous; the literature of the subject is copiously cited and usefully listed in the Table of Text and Periodical Citations at the beginning; and original text passages, which often provide the best available treatment of the topics they cover, are interspersed through the book. Users of the former book will welcome many of the texts previously supplied by Professor Gellhorn, which have been retained and brought up to date where necessary, including those on delegation of power to tax, the historical origins of due process, and license revocation. Excellent new texts include those on governmental authority to withhold evidence and on various aspects of legislative and executive control over administrative agencies. Doubtless because of space considerations, state administrative procedure legislation which has followed in the wake of the Administrative Procedure Act is not presented; but reference is made to the requirement of publication of regulations, the "laying" of regulations before legislatures, and the provision of simplified judicial review in some of these statutes. A Wisconsin declaratory order statute is also covered, and a footnote gives a brief history of state administrative procedure legislation and cites recent articles on this subject.

Because of its compendious character, the Gellhorn-Byse book is particularly well-adapted to the study of administrative law where students are addicted to exacting work or can be driven to it. For the most part close reading

is required, with excursions into footnotes and rapid shifting from one summarized case to another. In some sections a pointed opening text, a case fully set forth, or, in one instance,<sup>1</sup> a problem posed by the authors presents the issues to which subsequent study is to be directed; but elsewhere these emerge successively as one reads. Where this is so, posing an initial problem or assigning a leading case will serve to focus study and discussion. Teachers generally will also find the outline of this book much easier to follow than those of the predecessor volumes; for it conforms to the analysis of administrative law problems which has become usual, except that Judicial Review is the third chapter in the book. Those who prefer to adhere to the traditional order, which places this subject at the end of the course, may easily reserve all or portions of this chapter for assignment at that time.

The introductory chapter deals with historical and causal factors and with definition of the administrative process. Compared to Professor Gellhorn's former opening chapter, the present one seems less sparkling. The opening text is analytical and closely packed, not possessing the same literary merit as the excerpts previously employed. It does, however, cover many significant points, and good excerpts from various writers are included farther along in the chapter. Some of the matters treated would bear another look by the student after he has finished the remainder of the book and may, indeed, be reserved by the instructor for attention then.

The second chapter, on Legislative and Executive Control, covers a great deal of ground and contains much new matter relating to such points as legislative controls through appropriations, investigations, etc., and the relations of the chief executive to agencies of various types. Questions of delegation of functions and other aspects of separation of powers are dealt with from a practical, operating standpoint. Landmark cases such as *Field v. Clark* and *Hampton & Co. v. United States* have rightly yielded to a textual summary and to later decisions. Recent state cases and the differentiation of state from Federal law on this topic are given illuminating attention.

In the chapter on Judicial Control the material, largely new, on Preclusion of Review, Standing to Secure Review, Exhaustion of Administrative Remedies, Ripeness, and Primary Jurisdiction is especially closely packed. Primary Jurisdiction, indeed, escapes with but eight pages. Choices in the allocation of space have to be made, however, and one who quarrels with those made by the editors may easily assign supplementary material such as, for example, *Heikkila v. Barber*,<sup>2</sup> which here receives mention only through the opinion in *Rubinstein v. Brownell* in the Court of Appeals<sup>3</sup> and a footnote reference to a law journal discussion of the case. The material on scope of review is excellent. It includes the subject of judicial treatment of administra-

tive regulations and of whether agencies may properly prescribe policy in other ways than through regulations.

The chapter on The Informal Administrative Process, also new, is brilliant in the extreme. Here text, judicial decisions, statutes, and administrative material are woven together into an account which, within a brief compass, succeeds remarkably in conveying a sense of the needs, methods, and accomplishments of the administrative process in its most unique aspect. The use of binding declaratory decisions by administrative agencies is covered at the end of the chapter.

Space limitations forbid detailed discussion of the remainder of the Gellhorn-Byse book, covering such matters as compulsory process to obtain information, issues surrounding right to notice and opportunity to be heard, the significant aspects of formal administrative proceedings, and administrative proceedings and *res judicata*. Suffice it to say that, throughout, the material is well-selected and skillfully set forth. The editors' recognition in the Preface that judicial decisions constitute the preponderance of the data upon which this work is based should not obscure the fact that much else is included. Among the additional material will be found a good many utterances of administrators and excerpts from agency opinions. At several points the shuttling of a problem from court to agency and back again, and occasionally to and from the legislature, is followed. If a doubt as to a point of detail is appropriate, mention may be made of the treatment of official knowledge, official notice, and other methods of infusing expertness into administrative determinations, which seems unnecessarily long. Selection for teaching purposes may be appropriate here.

All in all, it is certain that this book will quickly take its place as a leading contemporary teaching tool in the field of administrative law and an outstanding addition to the literature of the subject. It is capable of becoming, as few course-books can, the student's main reliance in later professional work in its field.

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A COURT FOR CHILDREN. By Alfred J. Kahn. New York: Columbia University Press, 1953. Pp. xvi, 359. \$4.50.

This study of the Children's Court is an excellent analysis of the workings of one of our most important tools in the treatment of potentially delinquent or maladjusted children. Like a hospital that prevents future difficulties by correcting and curing illnesses revealed by symptoms and that does not confine its activities to looking after the chronically ill and the dying, the Children's