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

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Successive editions, always eagerly awaited, of this outstanding book on administrative law have caused it to be recognized as a leading work not only for classroom purposes but also for reading and reference. Cast into the form of a casebook and serving as a valuable teaching tool, it has nevertheless included such excellent thought and critical insight in its generous passages of text and notes, and has contained such a wealth of citations, as to render it virtually indispensable to serious students of the subject with which it deals. The present edition, which is the fourth in twenty years, retains in altered form the values of its predecessors despite a slight reduction in bulk and radical changes of content, to which the author-editors refer in their preface. As a collection of teaching materials the book is more manageable than before; the recent readings it reproduces, sometimes from sources not readily accessible, and the many new passages of original text are as stimulating and useful as any in the past.

The number of cases cited and reproduced or summarized, as reflected in a table at the beginning of the book, has been reduced more than sixty per cent below that in the preceding edition. The reason for this is the lessened need for a separate reference source because of the recent availability of “several comprehensive treatises” and the present adequate coverage of administrative law by commercial encyclopedists and digesters. The number of articles cited and quoted has, if anything, been somewhat enlarged, but notes and comments are no longer listed. Professor Kenneth Davis’ treatise is cited and quoted appreciatively at frequent intervals, and the numerous significant, recent writings of Louis Jaffe, Reginald Parker, Bernard Schwartz, and others receive similar attention. Use of federal and state documentary material has been considerably increased.

Chapter headings remain as before, except that chapter VII of the previous edition, “Some Elements of Fair Administrative Procedure in ‘Trial’ Hearings,” has become “Adequacy of Notice,” with the result that “Non-observance of Regulations,” a new sub-heading, fits somewhat awkwardly within it. Despite this continuance of the book’s basic structure, there are important new sub-headings and considerable fresh material under old ones, producing a work that is in many respects new. Especially noteworthy is the treatment given to the problems that occupy the center of the administrative law stage as a result of revelations in recent years—legislative and executive relations with the agencies, “influence,” and agency personnel and
decisional methods. Within these topics the authors include a superb, documented text on the many significant forms of legislative and executive control over agencies;\textsuperscript{2} the leading FCC "influence" cases in the Commission and the courts, with a consideration of the issues they raise;\textsuperscript{3} and an illustration and discussion of "influence" in CAB route and certification cases.\textsuperscript{4} A section entitled "The Men at the Top" contains perceptive commentaries on agency secrecy and delay,\textsuperscript{5} and an article by Louis Hector based on his memorandum to President Eisenhower, with some significant answers to it.\textsuperscript{6}

In this section and other parts of the book appear portions of the memorandum itself,\textsuperscript{7} and penetrating, although tentative, analyses and appraisals of the independent regulatory commissions by Emmette S. Redford and others.\textsuperscript{8} To illustrate the problem of complexity and delay in major regulatory proceedings there is even a full-page photograph\textsuperscript{9} from Fortune of thirteen stacks of the testimony and documents in an FPC pipe-line certification case, rising from the floor and concealing all but the head and shoulders of the hearing examiner who stands behind.

Other new material of particular significance includes twelve pages from Warner W. Gardner's excellent essay in the recent Columbia University volume, Legal Institutions Today and Tomorrow,\textsuperscript{10} followed by some less sympathetic recent comments on agencies by Justin Miller.\textsuperscript{11} A concise, up-to-date text on congressional delegation to administrative agencies\textsuperscript{12} replaces the Panama Refining Co. case\textsuperscript{13} and other earlier material. Substantial new material on delegation in the states\textsuperscript{14} and delegation of adjudicative authority\textsuperscript{15} has been added. There is original commentary on watchdog committees, committee investigations, participation by legislators in administrative proceedings and appointments, and other kinds of legislative supervision.\textsuperscript{16} New text introduces the subject of judicial review,\textsuperscript{17} and a new treatment of preclusion of review includes Panama Canal Co. v. Grace Line.\textsuperscript{18}

Under the heading, "Scope of Judicial Review,"\textsuperscript{19} the author-editors have

\begin{itemize}
\item \textsuperscript{2}Pp. 166-212.
\item \textsuperscript{3}Pp. 959-81, 999-1003.
\item \textsuperscript{4}Pp. 981-99.
\item \textsuperscript{5}Pp. 1089-1108.
\item \textsuperscript{6}Pp. 1108-19.
\item \textsuperscript{7}Pp. 56-62.
\item \textsuperscript{8}Pp. 1121-29, 67-81. It is worthy of note that the author-editors drew freely at many points on the observations and opinions of political scientists, of whom Professor Redford is one.
\item \textsuperscript{9}P. 1090.
\item \textsuperscript{10}Pp. 22-34.
\item \textsuperscript{11}Pp. 34-38.
\item \textsuperscript{12}Pp. 84-114.
\item \textsuperscript{13}Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).
\item \textsuperscript{14}Pp. 114-34.
\item \textsuperscript{15}Pp. 140-52.
\item \textsuperscript{16}Pp. 173-95.
\item \textsuperscript{17}Pp. 213-25.
\item \textsuperscript{18}Pp. 434-48.
\item \textsuperscript{19}Pp. 555-64.
\end{itemize}
added some excellent reprinted discussion of agency choice between rule-
making and adjudication, following the second Chenery case (retained at
length). There is good recent material on governmental withholding of docu-
ments from private parties; an excellent summary of government employees’
rights of due process in dismissal proceedings; thirty-six pages of largely
new text on adequacy of notice; similar textual material on some aspects of
proof, including the use of secret evidence by agencies; predominantly
new text on bias of officers; and up-to-date material on separation of
functions, including the role of hearing examiners.

Increased use of the author-editors’ original text, including abstracts
of many reported cases and summaries of other writings, together with
reprinted text passages from numerous sources, precludes employing the
orthodox “case method” with this book to any large extent. Relatively few
decisions are reproduced in extenso, although some leading opinions are
printed. The volume therefore calls for frequent and, over considerable
periods, exclusive use of problems as a basis of discussion, unless supple-
mentary assignments to original or mimeographed case reports, now omitted
from the book, are made. To facilitate following the problem method, the
editors have interspersed stimulating questions at various points and have
provided, in addition, a substantial supplementary pamphlet, geared to the
book itself, setting forth problems that may be assigned to a class or to indi-
viduals. The many instructors who practice the problem method extensively
will welcome the added assistance thus offered to them—without, of course,
having to abandon problems of their own. A processed Manual for Teachers
is also available.

The picture of administrative law that emerges from this volume is of a
still dynamic subject that has developed a vocabulary and structure enabling
knowledgeable lawyers in all parts of the United States to deal with common
problems and communicate with each other concerning them. Although
many of the more critical problems appear incapable of completely satis-
factory solution, improvement in numerous administrative processes and in
the legislative and judicial decisions dealing with them is definitely indicated.
In such a prospect there is much hope; and in confronting the future through
the material in this book, American law students will find ample information,
stimulus, and challenge.

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