Administrative Law

Law 116-002

Spring Semester 2025

Prof. Greve

Tues/Thurs 9:50 – 11:15

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Office Hours: Tues Thurs 11:15 –12:00; or by appointment

Welcome

to Administrative Law. Our textbook is Kristin E. Hickman, Richard J. Pierce, Jr., & Christopher Walker, Federal Administrative Law (4th ed. 2023). All other materials are or will be posted online (marked "O" in the Syllabus). Among those materials is a 2024 Supplement to the textbook ("O--Supp").

This is a *very* demanding course, with tons of readings, rules to memorize, and traps and exceptions—all for three measly credits. This introductory note provides an overview.

Overview

Administrative Law isn't some exotic specialty; it's about what government does. Its grim premise is that within very wide constitutional limits, government gets to do what it wants, provided it gives you some kind of "process." The way we teach this, through cases, screens out most of that "process"—all the stuff that goes on within agencies, or between an agency and the Congress or OMB and the White House. Even so the material can seem overwhelming, and it's quite a challenge.

First, the administrative state is biggish and does an infinite number of things in many different ways. It grants business licenses; administers disability benefits; sets industry rates and standards; writes checks (*lots* of checks, lately); collects taxes; takes over small banks and subsidizes and prosecutes large ones; collects your selfies (*kidding*); builds a border wall but then again, maybe not; etc. For this course, I have sacrificed breadth for depth. Major omissions include due process (you'll have to learn that in ConLaw II); internal agency proceedings; state (and local) administrative law; and statutes governing agency disclosures. There just isn't enough time.

Second, AdLaw isn't self-contained. It overlaps with ConLaw; Statutory Interpretation; with the specialized law of whatever playpen, one happens to be in (Environmental Law, Food and Drug Law, Financial Services, etc.); Jurisdiction (CivPro and FedCourts material); and cost-benefit analysis and economics. Alas, there won't be time enough to cover any of that in depth, either.

Third, the internal structure of AdLaw is quite complex. The doctrines on delegation, agency procedure, judicial review, etc. all hang together; and in a way, you can't understand any of them until you've understood all of them. Your textbook authors do a good job at taking this one step at a time, and the course largely (not always) follows the book's organization. But you'll want to remember that the connections between and among the cases and doctrines matter hugely.

Fourth, administrative law has a complicated history. It was squeezed awkwardly into the Constitution and has proven very unstable ever since. Sometimes it is sedimentary—layer upon historical layer. At other times, big chunks of doctrine simply disappear (*Chevron*, anyone?). Relatedly, AdLaw goes through periods of quiescence, when political compromises have been worked out and everyone knows what the rules are; and periods of social and ideological contest. You may have noticed that we're living through one of those upheavals as we speak, write, and study.

My mission is to give you a conceptual apparatus to comprehend and organize this *corpus juris*, all the while bearing in mind its multifarious, complex, mutable nature. Your mission is to absorb as much of this as you can. If you get lost or confused at any point, please avail yourself liberally of my offers of consultation (*see* below).

Learning Outcomes

Here's what you are supposed to take away from this course (and what not):

- Solid understanding of the principles, doctrines, and operation of general administrative law and the Administrative Procedure Act; ability to analyze cases and to apply the basic doctrines.
- Basic understanding of the history of Administrative Law.
- Firm grasp of the constitutional and institutional context within which Administrative Law operates.
- Exposure to, and comprehension of, the complexity and the various dimensions of Administrative Law: Political Control of Agency Action; Judicial Review of Agency Action; Statutory Interpretation and Common-Law Development; Jurisdiction.
- Introduction to the contemporary debate about "the administrative state."

Note what's conspicuously missing: something like, "ability to handle an AdLaw case." That can't be done. Most of the "cases" you'll encounter—especially the ones of the modern era, meaning anything after the recording of *Don't Stop Believing*—are just high-light reels of never-ending ping-pong games between agencies, interest groups, courts, and occasionally Congress. And each of these little battle fields has its own rules, conventions, personnel, precedents, and path dependencies. I'll do my best to give you an intellectual and conceptual framework—a way to think about, approach, and organize recurring questions, should you choose to practice in this area. Bear in mind, however, that competent administrative law *practice* will demand quite a bit more.

Logistics

Readings. "Too much reading" has been a consistent complaint about this course in years past. My sympathy is zero. In real life, any serious AdLaw case will present you with a record spanning hundreds or thousands of pages. (Carefully edited textbook excerpts give a very misleading picture of what this is like.) The course will give you at least a glimpse of the real world: way too much paper, way too little time. Welcome to my world.

Teaching; Class Participation. This is a mix of lecture and more conventional, "Socratic" teaching. I'll cold-call to keep you on your feet; but I strongly encourage active class participation, and I will consider it for purposes of your grade. Active, constructive participation means a .33 upgrade; repeated lack of preparation etc., a commensurate downgrade.

I will break up the class into two sections and, from session to session, call on one group and then the next. To encourage engagement and preparation, the second (not-on-call) group will prepare and submit, per

email, questions pertaining to the readings for the upcoming class. (I'll retain the questions and consider them in my "class participation" evaluation. So, you'll be batting and should be expected to be called on every other class. We'll work out the details in the first session.

If for some reason you have been unable to prepare for a class or to submit a question, send me an advance email. No harm if you do this once or twice; just don't make a habit of it. *Obviously*: even if your turn isn't up, you should still prepare for class (it'll be hard to follow the course without diligent preparation); and obviously, you may still volunteer questions and thoughts.

Consultation; Interim Assessment. I'm available for consultation and advice during regular office hours (**Tues, Thurs 11:15 - 12:00**); or upon request. **For these purposes, my "office" is the hallway near the Café**. You may request meetings at any time during the semester. Consultations are a good idea especially if this or that topic or session leaves you confounded.

It's also a good idea to check on your progress during the semester (and the ABA requires it). I've experimented with mid-Terms and quizzes—only to have students rebel. Far preferable: at least one *mandatory*, *in person* consultation session roughly half-way through the semester. Details, scheduling to follow.

Exam. Three-hour exam: open-book, essay-style, internet-secure. Well in time before the actual exam I will distribute a practice exam (half the length of the actual exam, but identical in format and degree of difficulty). Upon your individual request, you will have an opportunity to submit your practice exam and to review it with me.

Syllabus appears below. For each Session, I've listed the readings as well as comments and questions to help you through this morass. ***Note: The Syllabus is subject to change***, depending on the Supreme Court's AdLaw output over the course of the semester and on our pace. ***Please check the Syllabus regularly.*** The operative version at all times is the online edition.

Syllabus

"Gallia," Julius Caesar famously explained, "est omnis divisa in partes tres." This course, after a two-session Introduction, is divided into *four* parts, roughly following the organization of your textbook: Political Control of Agency Action; Judicial Review of Agency Action; Statutory Interpretation; and Jurisdiction. You'll discover quickly that this is mostly a matter of exposition. In any given case all these things go together: there's *always* a constitutional overhang; *always* a question of interpretation; *always* a question of judicial review and of jurisdiction.

Introduction

Session 1: What Is Administrative Law? A Brief History

pp. 1-5; 17-25

Optional: Michael Greve, *Dicey in America* (O)

Mostly lecture. Question for you: AdLaw has changed a lot over the decades and centuries. (When reading cases, always pay attention to the *date* of the decision.) Why might that be?

Session 1: Marbury and the Administrative State

Pp. 5-8; 13-17; *Marbury v. Madison* (O); Administrative Procedure Act (Appendix B);

Three reasons for teaching *Marbury*, yet again, in this course: (1) It is our first foundational Administrative Law case. (2) It is almost never taught that way. (3) The question of whether modern administrative law is consistent with *Marbury* is one of the central themes that will, and should, preoccupy you.

Ignore the stuff about the judicial power to declare acts of Congress unconstitutional: that's ConLaw. Focus on what Marshall has to say about what we now call judicial review of agency action (*i.e.*, the first parts of the opinion). The history of AdLaw will make a bit more sense against that backdrop.

Then, familiarize yourself with the APA. No need, for now, to sweat the details; just try to grasp the basic structure and, in particular, the way in which judicial review is supposed to operate. In what ways does that differ from the *Marbury* model?

Part I: Political Control(s) of Agency Action: the Constitution, Congress, and the President

Administrative agencies do a ton of stuff that looks like lawmaking—which the Constitution seems to commit to Congress alone. They also do a ton of stuff that looks like it ought to be done by Article III courts (you'll be amazed). So: what exactly *are* the constitutional limits to "delegating" those tasks to administrative agencies? And, let's say we're not entirely happy with what remains of the formal constitutional rules: do any of the sub-constitutional administrative law doctrines or canons work?

Session 3: Congress (Herein of Self-Delegation and Such)

Pp. 207-211 ("Formalism versus Functionalism"); 184-205 (*INS v. Chadha, Bowsher v. Synar*); 168-177; *CFPB v. CFSA* (O)

Read in that order. -- Congress can do all kinds of stuff in all kinds of ways; but it can make law in only one way. Keep the hyper-formalism in these cases in mind when you read delegation cases, which follow.

Session 4: Delegating "Lawmaking" Authority (I): Basics and History

pp. 29-68 (*Panama Refining; A.L.A. Schechter Poultry Corp.; Benzene Case; American Trucking; Michigan v. EPA*); pp. 735-738 (*Benzene* Revisited)

Panama Refining and *Schechter* are the only Supreme Court cases in our entire history to declare statutes unconstitutional on non-delegation grounds. But as you'll see, nondelegation lives and breathes in the canons. Consider the bullet point list on p. 68 (I'll add to it): does that look promising?

Session 5: Delegating "Lawmaking" Authority (II): Contemporary Approaches and Cases

Pp. 68-85 (*Gundy v. U.S.*); 91-112 (*U.S. Telecom Ass'n v. FCC; NHBP v. Black); NHBP* (O--Supp p. 2); *FCC v. Consumers' Research* (O)

Optional: Greve, *Delegation in Context* (O)

Guest Lecturer: James Conde (Boyden Gray Associates)

What exactly *is* Justice Gorsuch's approach in *Gundy*? And isn't Justice Kagan right: this all collapses into statutory interpretation?

Sacred promise: whatever you learn in this course about nondelegation will be outdated by June or July, when the Supremes will have decided *Consumers' Research*. Your guest lecturer first encountered that case as an exam hypo in this very course, at this very school. He has since served as one of the principal attorneys on the case. He'll walk you through it; prepare well.

Session 6: Adjudication Outside Article III

Pp. 133-168 (*Crowell, Northern Pipeline, CFTC v. Schor; Granfinanciera*); *Atlas Roofing* (O); *Jarkezy v. FCC* (O—Supp pp. 2-10)

Crowell v. Benson is the key case; read carefully. Does it provide a sensible formula for the scope of agency adjudication—or is it just schizophrenic?

In *Northern Pipeline*, this stuff takes a very strange turn into bankruptcy and state law claims over which federal courts barely have jurisdiction; read that case and let me explain the remainder of that puzzle.

Does *Jarkezy* suggest that there's now a majority to put *Schor* out of its misery? *Atlas Roofing*?

Session 7: Presidential Control (I): Appointments

Pp. 220-230 (*Lucia*); 243-280 (*Arthrex, Freytag*)

I've drastically curtailed the readings for Sessions 8 and 9. There's enough heavy ConLaw breathing in *that* course. For *this* course, just memorize the basic rules.

Session 8: Presidential Control (II): Removal

306-341 (*Free Enterprise Fund v. PCAOB*; *Seila Law v. CFPB*); 341-381 (Executive Orders etc.--skim)

Why don't Roberts & Co just do the obvious and bury *Humphrey's* and *Morrison* six feet deep? What's the best non-strategic, *legal* and *constitutional* argument for *not* doing that?

It's worth noodling over the problem of presidential control and direction of administrative agencies. Are we for or against "presidential administration"? Think of the President's power to direct under "emergency" statutes, and then under ordinary enactments. Should (or does) the President have power to direct DoJ (non-)prosecutions? To tell independent agencies to crank up or repeal rules to combat industry concentration? Mind you: these aren't hypos; they're recurrent questions. Think of some more; see if you can think of a coherent answer.

Part II: Judicial Review of Agency Action

This is the hard core of Administrative Law as we have come to understand it. Begin by reading the APA judicial review provisions very closely. Understand that judicial review under the APA depends not on what's at stake for the litigants but rather on (1) the form of agency action (formal and informal *adjudication*; formal and informal *rulemaking*) and (2) whether you are dealing with questions of *fact*, *law*, or something in between—"mixed" questions of law or fact, or of *policy*. Keep those distinctions in mind as we navigate these turbulent seas.

Session 9: Agency Adjudication and its Limits

Pp. 383-392 (*Londoner; Bi-Metallic*); pp. 452-450 (*Dominion Energy; Overton Park; PBGC v. LTV Corp.*) 469-501 (*Withrow v. Larkin; Nash v. Bowen; Gibson v. Berryhill*)

Once we know that agencies can and do perform most adjudicating in this country, several additional issues arise. (1) What exactly is the distinction between adjudication and rulemaking, and what follows from it? (What does the APA have to say about it?) (2) What are the *statutory* (APA, or other) requirements for adjudication? (3) May agencies freely choose between adjudication and rulemaking? (4) What are the *constitutional* due process requirements for agency adjudication?

This Session tackles (1) and (2). I've parked (3) under Judicial Review, Session 11. I've spared you (4) entirely: it's so *That Seventies Show*. Pp. 392-452 if you're interested.

You'll encounter *Overton Park* again in a later session; read carefully.

Session 10: Judicial Review--Adjudication

Pp. 502-527 (*Universal Camera; Richardson v. Perales; Biestek v. Berryhill*); pp. 527-535 (*ADAPSO*)

Beginning with this Session, drum the various standards of review—and the agency actions to which they apply—into your heads. Whether they mean anything is a different question; we'll discuss.

Session 11: Judicial Review—Rulemaking; Choice Between Rulemaking and Adjudication

Pp. 537-544 (*NPRA v. FTC*); pp. 895-911 (*City of Arlington*); 558-573 (*Chenery II; Bowen v. Georgetown Univ. Hospital*)

Two issues: (1) Agencies' *power* to issue rules a various kinds, under ambiguous statutes; (2) agencies' *choice* between rulemaking and adjudication.

Re (1): *NPRA* is a period piece, best understood as a good-natured joke. In later decades it got entangled in (now-discarded) *Chevron* metaphysics. That's *City of Arlington*; I'll explain. The precise *NPRA* question is at issue in several pending appellate cases; I may assign one of them.

Re (2): Assume (*contra Chenery II*) that you'd like to constrain agencies' choice (opportunistic maneuvering?) in some way: what would a judicial rule or doctrine to that effect look like?

Session 12: Judicial Review—Agency Rulemaking Procedures (I)

Pp. 573-634 (*U.S. v. Fla. East Coast R'way; Vermont Yankee; Shell Oil v. EPA; Portland Cement; Am. Radio Relay League v. FCC; U.S. v. Nova Scotia Food; Home Box Office v. FCC; ACT v. FCC; Sierra Club v. Costle; Ass'n of Nat'l Advertisers v. FTC*)

Extensive readings; can't be helped. Give yourself enough time, and take copious notes.

Two broad sets of issues: (1) the procedural requirements that apply at the several stages of the rulemaking process; (2) the trajectory of administrative law over the past four-plus decades. These things hang together.

Basic story: *FECR* (first case in your readings) effectively abolished the APA category of *formal* rulemaking. (As Prof. Gary Lawson has observed, the case appears in the U.S. Reports right after *Roe v. Wade*. Maybe *Roe*, RIP, was just a warm-up for *this* masterpiece.) In response, the D.C. Circuit imposed so-called "hybrid" rulemaking procedures, in excess of statutory requirements. That's what the SCt tried to stop in *Vermont Yankee*. You'll see how the D.C. Circuit managed to circumvent that ruling. You'll also see in a later session that (and why) the SCt basically threw in the towel on *Vermont Yankee*.

Session 13: Judicial Review—Exemptions

Pp. 634-677 (*Mack Trucks v. EPA; Little Sisters; Mendoza v. Perez; AMC v. MSHA; PG&E v. FPC; CNI v. Young*)

Administrative law (and APA review in particular) operates on a strong "presumption of judicial reviewability." No one knows where exactly that comes from (certainly not the APA), but it's out there. However, there are certain exceptions—some coming from the APA, others from judge-made doctrines.

Important Note: Several salient exceptions appear in APA Sec 701(a)—no review when statutes preclude judicial review, or for agency action committed to agency discretion by law. Your textbook editors have parked those issues under "Jurisdiction," and I have followed them (*see* Session XX).

The biggest issue for this Session, of *huge* practical importance, is the business about legislative versus "interpretative" rules. What do we make of the late Judge Williams's opinion in *AMC*?

Session 14: "Hard Look" Review

Pp. 677-720 (*Nat'l Tire Dealers; State Farm; FCC v. Fox Telev.*); *New York v. Dept of Commerce; Ohio v. EPA* (O—Supp pp. 10-11)

"Hard look review" is technically a form of arbitrary and capricious review. Its focus isn't on facts or on law but on the agency's *reasoning process*. None of that, of course, appears in the APA, and there's really no teaching it—it's more a mood than a doctrine. You'll just have to get a feel for it.

Time permitting I'll walk through the *State Farm* saga. There's more to it than meets the eye.

Part III: Statutory Interpretation in the Administrative State

Much of Administrative Law has collapsed into Statutory Interpretation—the stuff you learned as 1-L's. Do dredge up your LegStat class notes, outlines.

This part of the course looked *very* different before *Loper-Bright*: it was all choreography for the angels dancing on *Chevron*'s pinhead. Mercifully that ballet has ended. But you still have to understand *Chevron*'s rise and fall.

Session 15: Deference Canons, Pre-*Chevron*

Pp. 721-735 (*NLRB v. Hearst; Skidmore*); 938-966 (*Auer, Kisor*)

Two cases each on judicial deference to agencies' interpretations of statutes ("*Chevron*'s domain," as it used to be called) and of their own regulations. Read *Kisor* carefully: what, if anything, does it imply with respect to the *Chevron* question?

Session 16: *Chevron* and the "*Brand X* Problem"

Pp. (738-757) (*Chevron*); pp. 870-894 (*Brand X; Home Concrete Supply*)

If *Chevron* is (or was) right, *Brand X* must be right—no? Assume, though, that an agency changes a legal interpretation, previously upheld as "reasonable," in the course of an *adjudication*. Private party (asylum seeker, money manager) relies on that interpretation in the proceeding but the agency says guess what, sucker: we've changed our minds. *Brand X* and away we go and away *you* go, to El Salvador or to jail. That can't be right, can it?

On a heterodox note: observe how little *law* there was to be had in *Chevron*. What's a court supposed to do in that predicament? Note, too, that EPA had changed its interpretation of the CAA—very plainly, as a result of a change in administrations. Think back to Part I of this course: should that matter for purposes of review? If so, how?

Session 17: *Loper-Bright* and Beyond

Loper-Bright (O—Supp 12-21); pp. 869-870; *Net Neutrality Case* (6th Cir) (O)

Chevron's burial. Inquiring minds want to know what it means for the future. The giant sucking sound you hear comes from academics' thumbs. For purposes of focusing the discussion I've provided a momentous post-*Loper* case.

Suppose you run some agency. As the President's loyalist, you'll do what the Donald (or the Joe—doesn't matter) has told you to do; but if you write a rule to that end, any post-*Loper*, non-deferential court will mow you down. What are your options?

Session 18: Major Questions

pp. 911-912, 915-938 (*WV v. EPA*); *Biden v. Nebraska* ((O—Supp pp. 21-26)

Post-*Loper*, who really needs a "major question" doctrine? Isn't the shoe on the other foot, in the sense that federal courts will not, because they cannot, bring full-scale, *Loper*-style review to bear on every technical or esoteric term in the statute books? Who should settle, once and for all, the true and correct meaning of "moiety" in the Food, Drug, and Cosmetics Act (*see, e.g.*, *Otsuka Pharm. Co. v. Price*, 869 F.3d 987 (D.C. Cir. 2017))—the FDA, or a federal court? Can the courts *Skidmore* their way through this morass, or might they need a "minor questions doctrine"?

Session 19: Substantive Canons (Federalism, Delegation Once More, Lenity)

Pp. 812-828 (*Rapanos*); *Sackett* (O)

Behold: the latest chapters of the WOTUS saga, which has been with us since at least 1985 (!! Like I said: a lot of AdLaw is a never-ending ping pong game). By all rights these should have been *Chevron* cases, no? Why weren't they—perhaps, on account of the quasi-constitutional concerns that spook through the opinions? Because the Justices went hyper-textualist long before *Loper*?

The cases provide an opportunity to noodle over statutory review, post-*Loper*. If textualism on steroids cannot settle even this basic question, what *can* it settle? And, what role should, can, or will the dice-loading canons play in a post-*Loper* world?

Part IV: Jurisdiction

When exactly can you sue whom, when and over what? Those are usually the first questions for a competent lawyer, but your editors have wisely put them last: you have to know a fair bit about administrative law to understand the interplay between constitutional and administrative law doctrines.

As you'll see the Roberts Court has been very, very active in this playpen, especially of late. The cases don't have the nuclear oomph of *Loper*; but in the aggregate, they matter enormously in the daily trench war we call "administrative law." Moreover, they partake of the same orientation.

How so? Think back to our first two sessions; and recall *Jarkezy* and, of course, *Loper*. Can you see the connections?

Session 20: (Un)reviewability

Pp. 967-1027 (*Johnson v. Robison; Block v. CNI; Bowen v. Michigan Academy; Overton Park* [again]; *Webster v. Doe; Lincoln v. Vigil; Dunlop v. Bachowski; Heckler v. Chaney; AHPA v. Lyng*)

Copious readings; a bunch of rules to remember. Can't be helped; you'll encounter this often in real life. Good news: it's not all that complicated in theory (and I'll help you). Most of the difficulties have to do with the scope and application of all these rules and doctrines.

One way to organize this mess: there's a "law of not ever" (this Session), and a (somewhat under-developed) "law of not now." Those aren't hermetically sealed boxes; but it helps to collect the various rules under those headings.

Session 21: Timing and Availability of Judicial Review

Pp. 1027-1067 (*Franklin v. Mass; Bennett v. Spear; U.S. v. Hawkes; Abbott Labs; NOVA; Reno v. CSS*); *Corner Post* (O—Supp p. 27); *Air Brake Systems* (O)

Read *Abbott Labs* first; read *Air Brake Systems* after *Bennett*. It'll help you connect the dots: Judge Sutton, operating at his awesome best, explains the interplay between finality, *Skidmore*, and the *Chevron* regime, RIP.

Session 22: Exhaustion of Administrative Remedies

Pp. 1067-1097 (*McKart; McCarthy; Carr; "Agency Delay"*)

As a rule, "remedies" here means *procedural* remedies, meaning your right, or rather your duty, to talk to the administrators before they take your money or tell you how *not* to do things. Keep that thought in mind for the next Session.

Session 23: Judicial Remedies

Pp. 717-720 ("Remand Without Vacatur"); additional readings/cases TBA

In a way, the fact that this topic isn't in your textbook (nor, for that matter, normally taught in this course) tells you all you need to know about AdLaw. I insist on teaching it for two reasons. (1) Remedies are bound to preoccupy your prospective clients' thinking, and their willingness to pay you. (2) AdLaw is really weird, at least when measured against the baseline you remember from Torts, Contracts, or Remedies (put the plaintiff in the position he would have been in, but for the violation of right). At times, AdLaw is the law of meaningless remedies: with or without vacatur, a judicial remand simply means an administrative do-over. (What did the plaintiffs in *Lucia*, *Jarkesy*, *Arthrex* etc. actually win?) At other times, it means nationwide ("universal") injunctions against the enforcement of entire federal statutes, often obtained by some entrepreneurial state AG in a hand-picked court.

Not to go textualist on you; but the APA's cryptic 706 language ("hold unlawful and set aside") seems to cover all of that—or does it? For good measure, it holds out mandamus relief as its *first* option ("compel

agency action…"). When was the last time a federal court made an agency do anything at all? What were the APA's authors *thinking*?

We won't be able to cover this ground thoroughly; but you should get a sense of the basic problems that arise from the disconnect between rights and remedies.

Session 24: Standing to Sue, Constitutional

Pp. 1099-1132 (*ADAPSO*; *Allen v. Wright; FEC v. Akins; TransUnion*); pp. 1133-1173 (*Lujan v. Defenders of Wildlife; Steel Co. v. CBE; Friends of the Earth v. Laidlaw; Massachusetts v. EPA*)

If you conclude that none of this makes sense, you're in good company: *no one* thinks it does. I'll dictate a dozen or so standing "rules" that the courts regurgitate time and again. You'll have to cram them into your heads. However, how they get applied in any given context is anyone's guess (*Mass v. EPA*, anyone?).

Lately, there's been enormous turmoil in this area of the law; *TransUnion* is the crucial case. Witness the riveting debate between Justices Kavanaugh and Thomas. They're shadow-boxing over the late Justice Scalia's "standing" legacy, aren't they? Put those opinions next to *Lujan*, and see what you think of the "injury *in fact*" test.

The SCt has since decided, or will decide this Term, a raft of standing cases. I'll provide an overview.

Session 25: Statutory ("Prudential") Standing to Sue

Pp. 1078-1103 (*ADAPSO*—re-read); 117-1150 (*NCUA; Match-E-Be-Nash*; *Lexmark*)

Lexmark may be (even) more consequential than your book editors make it out to be.

Is it just possible that *ADAPSO* is the source of a bunch of crazy stuff in AdLaw?

Session 26: Concluding Thoughts

Content will depend on the progress we've made over the semester. If (as I strongly suspect) we're a bit behind, we'll use this session to cover the remaining materials. If we're on track, I'll assign short readings (law review stuff, not cases) on the state of the administrative state.