



ADMINISTRATIVE LAW

WEEK SEVEN
Tuesday, Oct. 5, 2021
Professor Julia M. Glencer

AGENDA

- 6:00 to 6:30 Constitutional Backdrop & Adjudication Basics
- 6:30 to 7:30 *Exercise*
- Break-----
- 7:40 to 9:00 40 min. on **Formal** Adjudication
40 min. on **Informal** Adjudication

Rulemaking
APA § 553



FORMAL
&
Informal

Adjudication
APA § 554

FORMAL
&
Informal

CONSTITUTIONAL BACKDROP

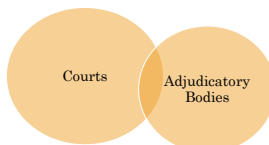
"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

U.S. Con. Art. I, § 1.

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts **as the Congress may from time to time ordain and establish**...."

U.S. Con. Art. III, § 1.

ALIKE BUT DIFFERENT . . .



"[F]undamentally alike in that they *determine controversies* under the law on the basis of evidence received in a hearing between parties . . . They are **different** in that . . . [adjudicatory entities are generally] *restricted to one subject* [and thus they build up *expertise* in that subject.]"

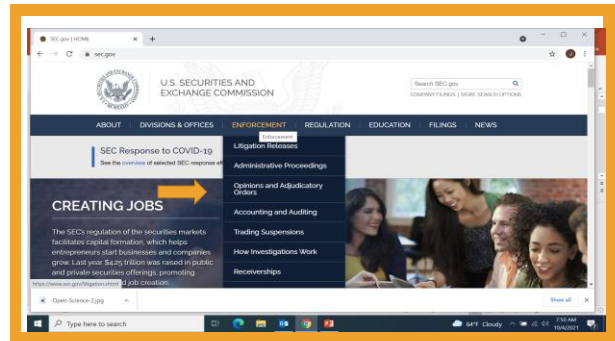
DIVIDING LINE

"[The Court will assess the extent to which a] non-Article III tribunal *impermissibly threatens* the institutional integrity of the Judicial Branch . . . [by weighing] factors, . . . with an eye to the practical effect [upon . . .] the constitutionally assigned role of the federal judiciary. . . . [including] the extent to which the essential attributes of judicial power are reserved to Article III courts, and, conversely, **the extent to which the non-Article III forum exercises the range of jurisdiction and powers normally vested only in Article III courts, the origins and importance of the right to be adjudicated, and the concerns that drove Congress to depart from the requirements of Article III.**

CFTC v. Schor, 478 U.S. 833, 851 (1986) (internal quotations removed)).

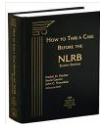
ADJUDICATION BASICS

- Admin agencies may have adjudicatory ARM or the admin agencies itself may be an adjudicatory BODY.



ADJUDICATION BASICS

- An admin agency's adjudication process is often dictated by Congress.
 - Look at the organic statute/act
 - Look at the particular substantive statute/act
- Different statutes come with different processes
- And the admin agency, body or arm itself usually also has a lot of authority to set its own process.



ADJUDICATION BASICS

Example of different methods of adjudication authorized by Congress:

- (1) admin agency **investigates and brings charges** in a federal district court;
- (2) one admin agency/arm **brings the charges** and another admin agency/arm conducts the **adjudication**;
- (3) **ordinary citizens enforce a statute** and accompanying regulations in court, often along-side an admin agency party;
- (4) the admin agency **investigates, bring the charges, and adjudicates** the charges.*

* "[T]he archetype of administrative adjudication."

Method No. 4 is the most commonly chosen by Congress (historically) & is the model upon which the APA is based.

ADJUDICATION BASICS

- Many admin agencies handle a **"multiplicity of functions"**
 - Investigates the situation
 - Becomes convinced there was wrongdoing
 - Votes to bring charges
 - Prosecutes
 - Testifies as an expert witness
 - Acts as the hearing examiner receiving evidence
 - Makes findings of facts and proposed conclusions of law
 - Hears an internal appeal
 - Renders the final decision

Bias?

Justice Black in *Cement Inst.* said NO!
 -Combination of functions is not *per se* unconstitutional.
 -Would need to show a more particular bias.
 -Otherwise the purpose of establishing an expert, experienced admin agency would be thwarted.

ADJUDICATION BASICS

- Withrow v. Larkin*, 421 U.S. 35 (1975):
 - Recognized "incredible variety" of admin agency structures & processes.
 - Explained that **without a showing to the contrary**, administrators "are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its circumstances" (citing *Morgan IV*).
 - "It is . . . very typical for the members of [admin] agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings. **This mode of procedure does not violate the [APA], and it does not violate due process of law.**"

ADJUDICATION BASICS

"Administrative agencies routinely combine all three governmental functions in the same body, and even in the same people with[in] that body."

Gary Lawson, *The Rise and Rise of the Administrative State*, 107 HARV. LAW REV. 1231, 1248-1249 (1994)

Tolerable & desirable!
Allows government to handle controversies as "rightly as possible"



Intolerable!
Violates separation of powers and Founder's worst fears

AND NOW, AN ACTIVE, EXERCISE . . .

Featuring a Socially-Distant Team-Work Component

Team	Team Member	Team Member	Assigned Adjudicatory Body
1	Maria Wicks m.wicks@duq.edu	Monica Young m.young@duq.edu	Surface Transportation Board (STB)
2	Ryan Monahan r.monahan@duq.edu	Robert Smith r.smith@duq.edu	United States Civil Service Board of General Supervision, Supervisory and Special Administration
3	Shirley Breyer s.breyer@duq.edu	John Lopez j.lopez@duq.edu	National Labor Relations Board
4	Tim Young t.young@duq.edu	Monica Young m.young@duq.edu	National Archives System of the National Archives and Records Administration (NARS)
5	Joe Gaudin j.gaudin@duq.edu	Monica Young m.young@duq.edu	United States Social Security Administration, Office of Retirement and Disability Policy (ORDP)
6	Robert Smith r.smith@duq.edu	Robert Smith r.smith@duq.edu	Office of Financial Institutions Regulation (OFIR)
7	John Smith j.smith@duq.edu	Monica Young m.young@duq.edu	Foreign Service Institute Board
8	Shirley Breyer s.breyer@duq.edu	Monica Young m.young@duq.edu	Patent and Trademark Office
9	David McFadyen d.mcfadyen@duq.edu	John Lopez j.lopez@duq.edu	National Credit Union Administration Board
10	John Lopez j.lopez@duq.edu	Monica Young m.young@duq.edu	Reserve Bankruptcy Review Board (RBRB)

THE GOAL . . .

- To find out as much as possible about this adjudicatory body (as if you were preparing to give a speech on this body and what it does . . .)
- BUT this is the *research* process . . .
- Overall point is to figure out what kinds of *resources* give you the best info

EXERCISE (First Half) . . .

- Spend 25 minutes *researching* your assigned adjudicatory body (*independently*)
- AND
- As you do so, make a *bullet-point list* of the *resources* you consulted and any *specific items* you found that were particularly helpful.
 - Go for *quantity* and *quality* . . .

AT 7:00 P.M. (*teamwork!*)

- Email your bullet-point list to your assigned teammate with a cc to me (glencerj@duq.edu)
- Your bullet-point list need not be beautiful; just make it understandable.
 - Citation doesn't count
 - You can be generic or specific . . .

GENERIC VS. SPECIFIC

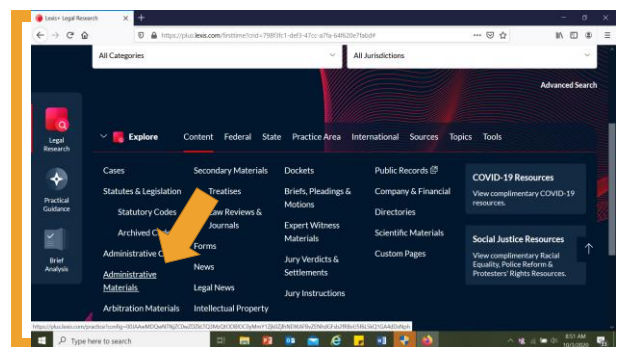
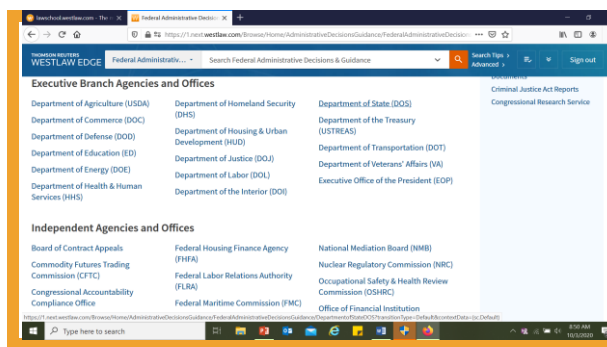
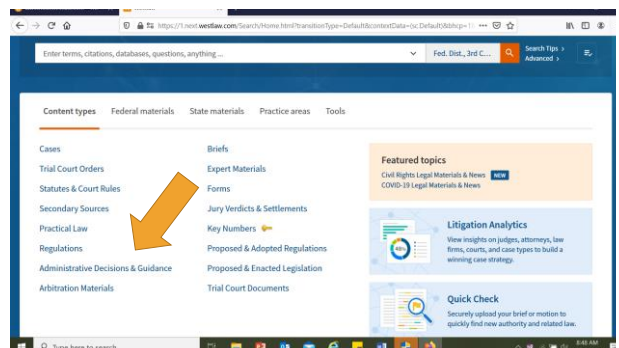
- Ran search for law review articles using FMSHRC name; found 1 with great history of creation.
- VS.
- Found Johnston, The Federal Mine Safety and Health Act of 1977: Is It Suffering from A Mid-Life Crisis?, 78 Denv. U. L. Rev. 441 (2001).

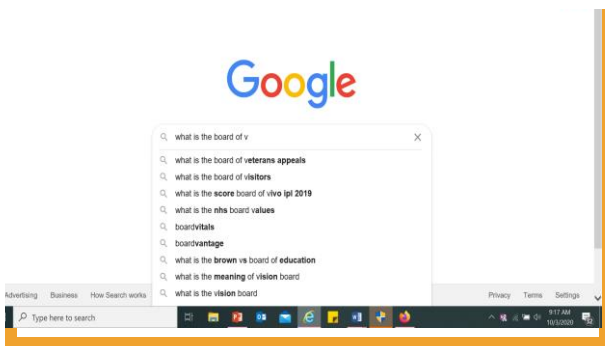
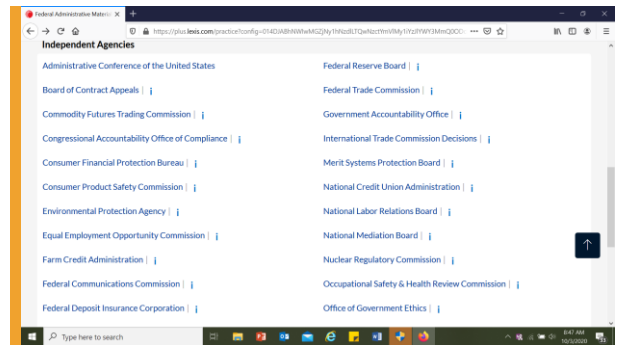
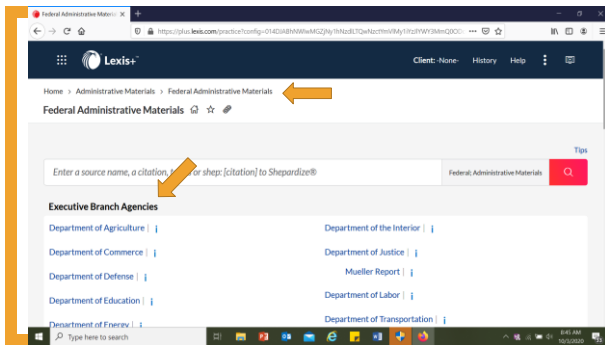
EXERCISE (Second Half)

- We'll list resources on the board
- When it's your turn, you must identify:
 - a great resource *you* found
 - OR
 - a great resource *your teammate found* that impressed you

WHEN WE'RE DONE . . .

- We should have a terrific **“research plan”** for how to go about understanding any adjudicatory body you could ever run into!
- Why? Because there is an **“incredible variety”** of different adjudicatory bodies and the first step is to learn about any one you encounter.





UNDERSTANDING THE APA

The two we will study the MOST are starred:

Formal rule-making Formal adjudication*
Informal rule-making* Informal adjudication

Rulemaking
APA § 553

FORMAL
&
Informal

Adjudication
APA § 554

FORMAL

§ 554(a)

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

- (1) a matter subject to a subsequent trial of the law and the facts de novo in a court;
- (2) the selection or tenure of an employee, except an administrative law judge appointed under section 3105 . . .
- (3) proceedings in which decisions rest solely on inspections, tests, or elections;
- (4) the conduct of military or foreign affairs functions;
- (5) cases in which an agency is acting as an agent for a court; or
- (6) the certification of worker representatives.

FORMAL ADJUDICATION

§ 554(b)

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

- (1) the time, place, and nature of the hearing;
- (2) the legal authority and jurisdiction under which the hearing is to be held; and
- (3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

§ 554(c)

(c) The agency shall give all interested parties opportunity for—

- (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and
- (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

FORMAL ADJUDICATION

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

§ 555 *PRECURSOR TO FORMAL ADJUDICATION*

§ 555. Ancillary matters

- Representation & accompaniment before the admin. agency
- Required documents for investigation
- Agency subpoenas
- Action on various types of requests

ADJUDICATION BASICS

"Administrative agencies routinely combine all three governmental functions in the same body, and even in the same people with[in] that body."

Gary Lawson, *The Rise and Rise of the Administrative State*, 107 HARV. LAW REV. 1231, 1248-1249 (1994)

Tolerable & desirable!
Allows government to handle controversies as "rightly as possible"



Intolerable!
Violates separation of powers and Founder's worst fears

ADJUDICATION BASICS

- Authorizing a **multiplicity of functions** in an admin agency can be a way of leveling the playing field for certain claimants/litigants, especially those with unequal economic power.
- In an administrative setting, the adjudicative body is not confined to the record made by the parties (as in litigation), and can draw on expertise.
- This set up allows the government to "offer its aid to a claimant, not so much because of the grave social import of the particular injury, but because the atmosphere and conditions created by an accumulation of such unredressed claims is of itself a serious social threat."

JAMES LANDIS, *THE ADMINISTRATIVE PROCESS* (1938), textbook at 474.



KAFKAESQUE?



"The word *Kafkaesque* is often applied to bizarre and impersonal administrative situations where the individual feels powerless to understand or control what is happening."

MERRIAM-WEBSTER DICTIONARY
Kafkaesque, <https://www.merriam-webster.com/dictionary/Kafkaesque>
(visited Feb. 19, 2020) (emphasis added).

ADJUDICATION TO MAKE POLICY

- Many admin agencies use adjudication to make policy (reminiscent of how courts make common law).
- The NLRB is often a political battleground. (*We will read many cases involving the NLRB...*)
- Textbook example = NLRB which – with full authority from Congress – creates "rules" through its case law.

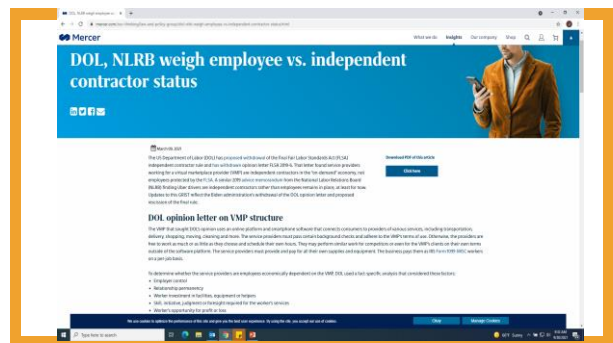


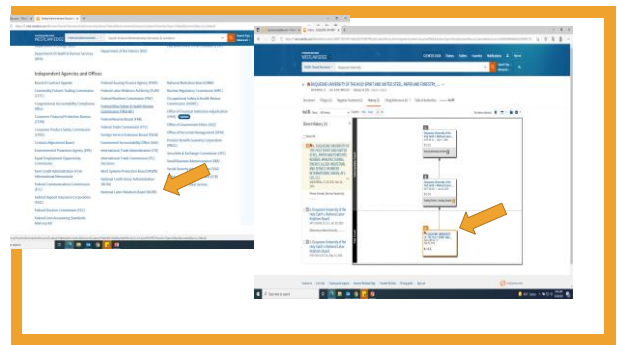
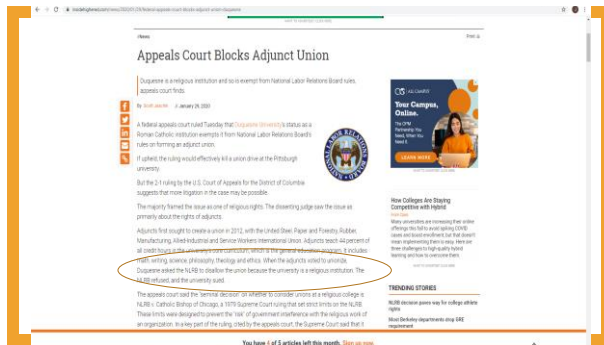
NLRB EXAMPLE



"In its recently issued decision in *Supershuttle* . . . the [NLRB] **reversed course** on the test it uses to determine whether a worker is an employee or an independent contractor, adopting a more employer-friendly standard. While it retains the common law's multi-factor test for determining independent contractor status, which the NLRB has always purported to follow, *Supershuttle reintroduces* the worker's "entrepreneurial opportunity for gain or loss" as the test's "animating principle." *Supershuttle overturns* the NLRB's 2014 *FedEx Home Delivery* decision, which **downplayed** the importance of "entrepreneurial opportunity" in determining independent contractor status."

• NLRB Returns to Employer-Friendly Standard for Employee vs. Independent Contractor Test, <https://www.jdsupra.com/legalnews/nlr-returns-to-employer-friendly-56376/> (March 7, 2019).





ADJUDICATION BASICS

- *Citizen's Awareness Network, Inc. v. U.S.*, 391 F.3d 338 (1st Cir. 2004).
- Recognized the APA as providing a *skeletal and flexible* blueprint for FORMAL adjudication, with broad discretion left to the admin agency to formulate detailed procedural rules.
- Cited *Vermont Yankee* for the principle that courts cannot impose procedural requirements beyond APA.

ADJUDICATION BASICS

"Procedural flexibility is one of the greatest hallmarks of the administrative process and is a feature that courts must be reluctant to curtail. Though the [NRC's] new rules may approach the outer bounds of what is permissible under the APA, we find the [APA] sufficiently broad to accommodate them. Similarly the [NRC's] judgments as to when its procedures need fine tuning and how they should be retooled are ones to which we accord great respect."

- *Citizen's Awareness Network*, 391 F.3d at 355.

ADJUDICATION BASICS

- Admin agency adjudicatory bodies routinely admit **hearsay evidence** [why?]
- § 557(c) requires admin agency decisions to include **findings and conclusions** [why?]
- **Participation** in the formal adjudication?
 - Typically limited to parties (dictated by act)
 - Can include intervenors and/or amici with permission (largely left to discretion of admin agency)
 - Sometimes act dictates inclusion of others with "public"-type interest
 - Participation does NOT equal standing to seek judicial review

What is an ALJ?

Where does an
ALJ sit in
hierarchy of
decision?

EX PARTE CONTACTS

- Often of concern given the “multiplicity of functions” & judicial-like role of these adjudicatory bodies.
- Brings into play § 557(d) and § 554(d)
- Your textbook identifies 3 unique areas of concern:
 - Ex parte contact: Within the admin agency itself
 - Ex parte contact: From an outside government official (President, legislator, other admin agency head)
 - Ex parte contact: With the regulated public

EX PARTE CONTACTS

- *Prof. Air Traffic Controllers Org. v. FLRA*, 685 F.2d 547 (D.C. Cir. 1982) (*PATCO*).



EX PARTE CONTACTS

- *PATCO* court explained that outing/disclosing *ex parte* contacts “serves two distinct interests” –
 - **Avoids appearance of impropriety**
 - Ensues fair decision-making (as a party must know the arguments actually being presented to the decision-maker to be able to respond effectively).

- ***PATCO* Test**: “[W]hether, as a result of improper *ex parte* communications, the admin agency’s decision-making process was **irrevocably tainted** so as to make the ultimate judgment of the agency unfair, either as to an innocent party or to the public interest that the agency was obliged to protect.”

- Factors to inform the ***PATCO* Test**:
 - the gravity of the *ex parte* communication
 - whether the contacts may have influenced the ultimate decision
 - whether the party that made the improper contact benefitted from the ultimate decision
 - whether the content of the *ex parte* communications were known to the opposing parties
 - whether vacating the ultimate decision and remanding for new proceedings would serve as useful purpose

EX PARTE CONTACTS

Within the admin agency:

- Always of concern (but also somewhat inevitable given the multiplicity of functions & close quarters)
- Admin agencies tend to have internal rules & APA limits contact with ALJs crafting of decisions (*Chinese walls*)
- Staff must understand and honor “separation of powers/functions”
- Requires individual commitment to integrity

EX PARTE CONTACTS

With outside government officials:

- Reality: Admin agencies for operate in unruly world of politics and are typically answerable to a Congressional oversight committee
- These conversations *will* occur; becomes a matter of how they occur:
 - Look for the line between vigilance & intermeddling (Pillsbury, pg. 522-23)
 - Seek to respect the judicial-like aspect of adjudication and individual party's rights

EX PARTE CONTACTS

With the regulated public:

- Depends on when the contact occurs
- While admin agency official *is in office*, PATCO provides: "It is simply unacceptable behavior for any person directly to attempt to influence the decision of a judicial officer in a pending case outside of the formal, public proceedings . . . This rule applies to administrative adjudications."
- Ethical matters also now subject to Office of Government Ethics
- Also criminal prohibitions on bribery

EX PARTE CONTACTS

With the regulated public:

- *After* the admin agency official *leaves office*, many restrictions imposed by Ethics in Government Act (1978)

REVOLVING DOOR



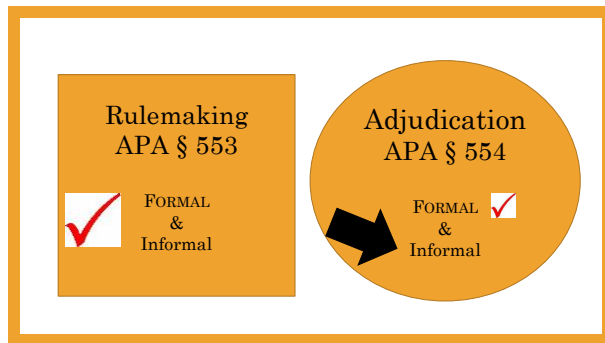
Good Government
v.
Sound Ethics

"On the one hand, a continual stream of people entering government from the private sector is perceived as highly desirable . . . Movement between government and the private sector is valued as injecting energy, experience, practicality and perspective that would be lacking in government-by-professional-bureaucracy. On the other hand, there is an equally strong conviction that neither elected nor appointed officials should have financial interests or relationships outside the government that compromise their exercise of power."

Cynthia R. Farina, Reporter, KEEPING FAITH: GOVERNMENT ETHICS AND GOVERNMENT ETHICS REGULATION, 45 Admin. L. Rev. 287, 296-97 (1993).

EX PARTE CONTACTS

- Remedies under § 557(d) for *ex parte* contact?
 - (1) Disclosure of the communication and its content
 - (2) Requiring the violating party to "show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation"
- Principal purpose is not to punish the violator but to preserve the integrity of the administrative process



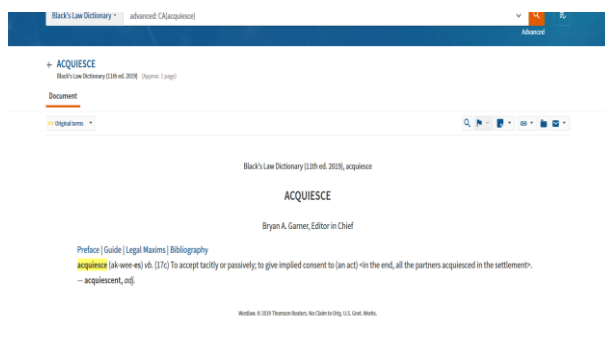
INFORMAL ADJUDICATION

INFORMAL ADJUDICATION

- Broad array of admin agency actions that qualify as “adjudication” because they produce an “order” (defined as a “final disposition” under *[what?]*), but yet fall outside of the APA’s “on-the-record” procedures.
- Represent a vast, diverse assortment of activities.
- These activities can be very influential in daily life.

INFORMAL ADJUDICATION

- *Dominion Energy Brayton Point, LLC v. Johnson*, 443 F.3d 12 (1st Cir. 2006).
- Initially EPA decided to “acquiesce” in the prior appellate court decisions that “public hearing” in the Clean Water Act DID presumably require FORMAL Adjudication.
- What does “acquiesce” mean?



INFORMAL ADJUDICATION

- *Dominion Energy Brayton Point, LLC v. Johnson*, 443 F.3d 12 (1st Cir. 2006).
- Initially EPA decided to “acquiesce” in the appellate courts’ decision that “public hearing” in the Clean Water Act presumably requires FORMAL Adjudication.
- What does “acquiesce” mean?
- The analysis is a little more complex than just a hunt for “magic words” . . .

"At the outset *we reject* . . . that the precise words "on the record" must be used to trigger the APA. The Supreme Court has clearly rejected such an extreme reading . . . Rather, . . . the resolution of this issue turns on the *substantive nature of the hearing Congress intended to provide*. . . .

[Here,] EPA Administrator must make specific factual findings . . . Adversarial hearings will be helpful, therefore, in guaranteeing both reasoned decision-making and meaningful judicial review. This is exactly the kind of quasi-judicial proceeding for which the adjudicatory procedures of the APA were intended. The panoply of procedural protections provided by the APA is necessary not only to protect the rights of an applicant for less stringent pollutant discharge limits, but is also needed to protect the public for whose benefit the very strict limitations have been enacted.

- *Seacoast Anti-Pollution League v. Costle*, 572 F.2d 872, 876-77 (1st Cir. 1978).

INFORMAL ADJUDICATION

- *Dominion Energy Brayton Point, LLC v. Johnson*, 443 F.3d 12 (1st Cir. 2006), continued.
- After the EPA decided to "acquiesce," *then what happened?*
- *Chevron* (buttressed by a presidential directive to streamline admin agency procedures).
- *Brand-X*: "[A] court's prior judicial construction of a statute trumps an [admin] agency construction otherwise entitled to *Chevron* deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and leaves no room for agency discretion."

ORGANIC/ENABLING ACT VS. APA



- *Chevron* deference does NOT apply to an administrative agency's interpretation of the APA.

- **Why?** Because courts have the authority to interpret the APA in the face of ambiguity in the APA itself and because the APA was intended to bring uniformity to administrative agency procedures across-the-board.

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TOPICS SURVEYS & RANKINGS SUPREME COURT BRIEF ALL SECTIONS

deference to agencies interpreting their own regulations, urging his colleagues to reconsider both rulings.

Thomas wrote alone in an 11-page dissent that said the Supreme Court should have agreed to review the tax case *Sullivan v. United States*. The *Baldwin* petition, arriving from the U.S. Court of Appeals for the Ninth Circuit, had asked the justices outright to overrule Thomas's 2005 decision in *National Cable & Telecommunications Assn. v. Brand X Internet Services*, a regulatory case that said a federal agency had correctly interpreted the Communications Act of 1934.

Thomas used the *Baldwin* case to raise and advance his concerns about his prior *Brand X* decision, and the underlying doctrine called "Chevron deference," a bedrock part of administrative law that says courts generally adopt agencies' views, if reasonable, of their rules. That deference has drawn criticism from conservatives members of the court, but no justice has moved to overturn the 1984 ruling.

"Even if the court is not willing to question *Chevron* itself, at the very least, we should consider taking a step away from the abyss by revisiting *Brand X*," Thomas wrote in Monday's dissent. Quoting a statement from the late justice Robert Jackson in a 1950 ruling, Thomas said: "It is never too late to 'surrender' former views to a better considered."

Gain insights into what's happening across all sectors of the legal

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INFORMAL ADJUDICATION

PBGC v. LTV Corp., 496 U.S. 633 (1990).

"The determination in this case [i.e., to restore the company's underfunded pension plan] . . . *was lawfully made by informal adjudication, the minimal requirements for which are set forth in § 555 of the APA*, and *do not include* such elements [meaning those procedures required in formal adjudication]. A failure to provide them where the Due Process Clause itself does not require them . . . is therefore not unlawful."

§ 555 AS PRECURSOR TO FORMAL ADJUDICATION AND SOURCE OF PROCESS FOR INFORMAL ADJUDICATION

§ 555. Ancillary matters

- Representation & accompaniment before the admin agency
- Required documents for investigation
- Agency subpoenas
- Action on various types of requests

INFORMAL ADJUDICATION

§ 555(e)

(e) *Prompt* notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a *brief statement of the grounds* for denial.

INFORMAL ADJUDICATION

Olivares v. Transportation Security Admin. (TSA), 819 F.3d 454, 460 (D.C. Cir. 2016).

E-Mail denial: "This training request cannot be processed for the following reason(s): [TSA] has received information in regards to your immigration status. As a result, your current training request to attend flight training at a United States flight school has been cancelled. If you resolve your immigration status and provide the appropriate supporting documentation this cancellation may be lifted and your training request approval reinstated."

**Supplemented in court by the "Vara Declaration" explaining why Applicant deemed a risk to aviation & national security; referred to internal materials before the TSA at time it made its decision and offered the underlying rationale.*

INFORMAL ADJUDICATION

D.C. Cir.'s "Word of Caution" to the Admin Agencies:

"In the future, agencies will be *well advised to obey the explicit command of § 555(e)*, rather than counting on being able to salvage their actions later, after the losing party has been forced to seek redress in court. Persistent scofflaw behavior might cause the courts to insist that the contemporaneous explanation actually be expressed to the [applicant], as the statute requires, on pain of vacatur and remand. Or the courts might insist on progressively more compelling indications that the reasons offered were in fact the reasons governing the decision when it was made. The offending agency action in this case was mitigated somewhat because the [materials were made available to the Applicant before briefing and oral argument in the appeal]. This may not be sufficient in future cases involving agency defiance of § 555(e)."

Olivares, 819 F.3d at 464-65.

INFORMAL ADJUDICATION

§ 555 as source of other lurking "rights"?

(b) . . . *With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. . .*

Friends of the Bow v. Thompson, 124 F.3d 1210 (10th Cir. 1997)

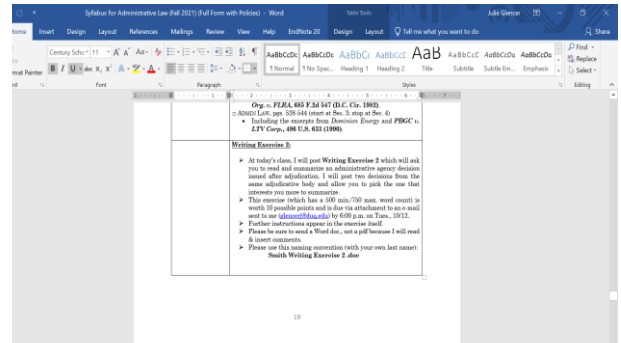
- Environmental group sent letter to Forest Supervisor asking for update to the Environmental Assessment upon which timber sales were authorized due to "changed circumstances."
- No direct response to the letter, but implicated in a supplemental report issued a year later
- Tenth Circuit assumed without deciding that § 555(b) did apply to the "letter" but said report responded to it and did so promptly under the circumstances (complexity took time).

Rulemaking APA § 553

FORMAL
&
Informal

Adjudication APA § 554

FORMAL
&
Informal



QUESTION 1 ((worth up to 8 points))

You are an associate at Thomas & Welling, LLP, a mid-size law firm. Another associate, Amanda, has e-mailed you. Here is her-mail, stamped 11:59 a.m. –

“Hey, too busy for lunch today. Paul Welling, Sr. just asked me to research something I know nothing about and he wants to talk with me at 4 p.m. about it. You took an Administrative Law course, right? I didn’t, so maybe you can help me!

Paul has a client – some big printing company that offers printing services in 3 states and sometimes does printing for the federal government as well. Paul got a call from this client this morning. Apparently, this client received a notice in the mail yesterday about having to appear on February 1, 2021, with counsel before some new adjudicatory board. Apparently this new adjudicatory board oversees disputes forwarded to it by various arms of the federal government whenever a service provider invokes a business-interruption clause in an insurance contract for a job it either couldn’t complete or couldn’t complete on time in 2020 due to the Coronavirus pandemic. Paul has never heard of this adjudicatory board and he wants me to research it and tell him all about it.

How do I go about quickly teaching myself about a new adjudicatory board? If you could give me some bullet points with a sentence or two per bullet telling me why and where I should look for that thing, I’ll buy you lunch tomorrow!”

QUESTION 1 ((worth up to 8 points), *continued . . .*)

Please draft an e-mail responding to Amanda and include the bullet point list, with explanatory sentences, she has requested.
(FYI: You like Amanda, you should assume she has similar legal research skills to your own, and yes, you may use bullets as part of your e-mail.)