



TACKLING **ADMINISTRATIVE** **LAW** **RESEARCH**

**10 TIPS TO HELP YOU
PREPARE YOUR
COURSE OR WORKSHOP.**

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Administrative law research can be taught in many ways—as a one-credit class, as part of an Advanced Legal Research (ALR) course, as a mini course incorporated into other subject-specific courses such as environmental or animal law research, as a workshop, or, if you’re ambitious, introduced during 1L research classes. Outside the law school environment, it’s a subject ripe for lunchtime workshops and one-on-one instruction, whether by appointment with a librarian or on an as-needed basis. The following 10 tips will help you prepare your class or workshop on administrative law research.

1 Use Visual, Tactile, and Real-World Examples Start the class by asking, “What’s in your bag?”; “What did you have for breakfast?”; or more broadly, “How were you regulated today?” These straightforward questions provide real-world examples of regulated products, food, and industries.

Using visual and tactile examples in exercises is a simple way to make administrative law relatable to students’ everyday lives. For example, consider these two favorites: 1) Discuss Portland, Oregon’s many drawbridges and ask students to find the part of the Code of Federal Regulations (CFR) that governs each bridge and the times the bridges can be lifted; 2) Bring in a can or frozen bag of peas and ask students to find the regulations governing peas, as well as food labeling regulations. Have them also address questions such as, “What makes a product organic?”



This backpack has patches from state administrative agencies gathered by instructors. Photo courtesy of Julie Graves Krishnaswami.

Visual aids also provide a way to bring state administrative law research into the course. Consider displaying a backpack with state park patches on it. If the state park patches are from different states, compare what state regulatory publications are available, and how those compare and contrast to federal publications. The comparison will help students see the pattern and format of how regulations—regardless of jurisdiction—are published.

Real-world examples make the abstract regulatory process more understandable through their connections to the students’ daily lives. In addition to the examples above, the following in-class exercise will help students get used to browsing in an unfamiliar database: Provide students with an object or image of an object (i.e., a photo or digital image of an object) and have them use the e-CFR (Electronic Code of Federal Regulations) to find the regulation (from a previously compiled list of CFR sections) that corresponds to the object provided.

2 Draw from the News Class hypotheticals almost write themselves in administrative law research. An easy assignment is to ask students to bring a current news story to class, then spend 30 minutes of class researching the administrative law issues

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raised by the news article. Students can work on this individually or together as a class to brainstorm keywords and phrases, including which agencies to research, then use the agency's website, the *Federal Register*, and the *Code of Federal Regulations* (or all three), to find the pertinent information, whether it is a guidance document or a code section. This exercise also helps students learn about government information and the potential lack of retention of that information, and provides them with the ability to go from a news story, written for a person without any legal training, to taking those key terms and translating them into the language necessary for effective searches.

3 Keep it Simple Administrative law can be complex. Because it encompasses more than just finding a case or statute on point to include the varying administrative law publications, it's best to keep assignments and course organization as simple as possible. One way to accomplish this is to teach one industry and governing agency over the length of the course, then give a midterm or mock final exam with a different agency hypothetical. While some agencies, such as the U.S. Securities and Exchange Commission or the Internal Revenue Service, are very different than, say, the Food and Drug Administration, many basic regulatory principles apply agency to agency. If a student understands the regulatory process, he or she can use these skills within a different subject area of the law.

Another way to keep the course as simple—yet as expansive—as possible is

to start with a reported federal decision that has administrative history and work backward to include administrative decisions, guidance material, regulatory history, and regulations. If you're teaching administrative law research as part of a larger ALR course, this could also include statutes and legislative history. Looking for a federal decision to use? Try *Rubin v. Coors*, 514 U.S. 476 (1995).

4 Incorporate Primary Authorities From the outset, students need to know and must be able to recognize the various primary authorities. Their comprehension must include the types of primary sources, as well as how and where they are published. Armed with an understanding of primary sources, students can locate and search within fields quickly, using the best database or publication. Likewise, students need to know how the primary sources are related and how they fit into a regulatory timeline. Then, students can rely on the research principle that finding one on-point primary authority enables a researcher to find other relevant authorities.

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Collateral primary authorities include those documents that are distinct and different among agencies.

These include guidance documents, unified regulatory agendas, policy directives, manuals, meeting agendas, and documents governing agency practice. Students should familiarize themselves with an agency's materials by consulting the agency's website, the *Federal Regulatory Directory*, the *United States Government Manual*, or another secondary source to determine what types of collateral primary authorities the agency publishes.

Additionally, collateral primary authorities include those primary documents that make agencies and regulation possible. The two most important for legal research are the *Administrative Procedure Act* and the *Federal Register Act*, but students should be aware of other laws, including the *Paperwork Reduction Act*, the *Regulatory Flexibility Act*, the *Unfunded Mandates Reform Act*, and the *Freedom of Information Act*, as well as specific executive orders.

An appellate court decision provides a straightforward way for students to practice locating the primary authorities. Another method requires students to pull proposed rules that are referenced in the news. Locating proposed regulations can be easy, as in the net neutrality rulemaking, or more complicated, as in the proposed rollback of the U.S. Environmental Protection Agency's Mercury and Air Toxics Standards. Comparing, contrasting, and labeling the different parts of the primary authorities is also useful in underscoring the differences in the publications.

5 Incorporate Secondary Sources To round out administrative law research, students also need exposure to secondary sources. In administrative law, some of the easiest secondary sources to introduce are newsletters and practice guides covering regulated industries. These could include Bloomberg BNA Law Reports, such as *Antitrust & Trade Regulation Daily* and *Securities Regulation & Law Report*, as well as the *E&E Daily* for environmental law. These resources not only contextualize the law, but

they are also helpful in assisting students in identifying seminar paper topics for doctrinal courses, as well as serving as background reading in preparing for job interviews. Options for incorporating these newsletters in courses or workshops include assigning homework questions relating to a specific story, or having students turn in periodic summaries and reflections on what they have read in the newsletters.

What may go overlooked, though, is that administrative law is not just the law that agencies make (i.e., regulations or administrative decisions). It also includes the law that governs agencies in making that law; specifically, the *Federal Register Act*, the *Administrative Procedure Act*, and open government laws such as the *Freedom of Information Act*. Treatises on the underlying law that governs agencies help highlight whether an agency is operating consistently with the law, as well as ensure that its documents are accessible and its meetings are open.

6 Tell the Story Using a factual scenario set within an industry can illustrate how multiple agencies work together to solve a problem, engage in rulemaking, and carry out statutory functions such as licensing and adjudication. Moreover, teachers can underscore that this scenario provides a mental model and should be applied whenever students encounter other issues within heavily regulated industries. Although agencies and agency practice differ, many similarities translate to basic research principles and practices that apply across regulatory entities and areas of law.

To be sure, there are clusters of types of agencies that share organizational structures and functions that are designed to solve similar types of problems. For example, teachers can use the following clusters of agencies:

- **Labor and Employment:** Equal Employment Opportunity Commission (EEOC), National Labor Relations Board (NLRB),

and Mine Safety and Health Administration (MSHA).

- **Public Land Management:** Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), Forest Service (FS), and National Park Service (NPS).
- **Food:** US Department of Agriculture (USDA), Food and Drug Administration (FDA), Food Safety and Inspection Service (FSIS), Federal Trade Commission (FTC), and Centers for Disease Control (CDC).
- **Alcoholic Beverages:** Alcohol Tobacco and Trade Bureau (TTB) and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

Using these clusters can help students recognize patterns in regulatory behaviors and employ a mental model across agencies. Additionally, teachers can draw on these agencies to create fact patterns and tell a story about regulation. Dig into the craft beer industry and have students determine how it is regulated. Likewise, ask students to examine the history of the regulation of sugar. Telling these types of stories can involve using documentaries, case studies, op-eds, news stories, interviews, and blog posts. Moreover, telling the regulatory story of an industry or product involves using both primary and secondary sources.

7 Connect the Story to Legal Practice Using secondary sources such as legal newspaper articles, industry updates, practice guides, and practice-oriented monographs brings regulatory issues out of the classroom and into legal practice. Likewise, inviting a guest speaker to discuss how he or she works and researches in a heavily regulated industry can be worth the class time. Be on the lookout for news stories that can be instructive, interesting, and then linked to rulemaking and agency adjudication. Also, befriend agency lawyers!

8 Tell the Story through the Agency's Eyes Students can be tasked with the role of an administrator who needs to gather specific publications for his or her office.

Alternately, students can outline or draft a comment. Drafting a comment involves locating and synthesizing primary and secondary authorities from the perspective of a practitioner or member of the public.

Working from the regulator's perspective also illustrates the ways that different agencies work together. This exercise also reveals how agencies work with industry stakeholders. The regulation of milk serves as an example. Asking students the simple question of whether soy milk can be labeled as milk will lead them to pull in a variety of regulations as well as a complex regulatory history and legislative backstory.

9 Use an Instructional Model The final two tips focus on best practices when it comes to teaching in general, rather than specifically teaching administrative

law research. The first tip is to use an instructional model. One established model that works well for adult learners is Robert Gagné's nine events of instruction (more detail is available in his 1985 book, *The Conditions of Learning*). Generally, the model requires instructors to plan each class session with certain components in mind. This model works for entire courses as well as one-off instructional sessions. Highlights of this structure include:

- At the beginning of each session, the instructor should do something to capture the students' attention, perhaps by talking about something in the news or by showing a video from YouTube that will serve as the basis for the day's lesson. Be exciting! Our regulated world is rife with content to capture someone's attention.
- Gagné's model also requires the instructor to be explicit about what students will be expected to know

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and be able to do by the end of the class session. The instructor should also be intentional in identifying prior learning to prepare the student for the new information that will be covered in each session.

- The model requires that instructors present the content in a different way than a traditional lecture. Presentation methods that allow for student interaction enable you to incorporate formative assessment into the class (more on this below) and also give students immediate feedback on their understanding of the content.
- During the instructional session, students must also do something for which they get immediate feedback. This is yet another way to incorporate formative assessment.

Finally, and most importantly, students must have an opportunity to internalize what they have learned to support transfer of the knowledge to new situations. This step within the model can be accomplished in many ways. Instructors can ask students to paraphrase what they have learned, or create a job aid, checklist, or template that they might be able to use later.

10 Use Formative & Summative Assessments The final tip is to incorporate both formative and summative assessments into research instruction. Both forms of assessment are vital to ensure comprehension and transfer of knowledge and skills.

Formative assessment constitutes in-the-moment appraisals that help

identify student understanding while instruction is occurring. Such appraisals can take many forms and allow an instructor to adjust his or her presentation on the fly, because they not only provide feedback to students, they also inform the instructor about what content is most troublesome for students. Formative assessment allows instructors to change course and provide supplemental guidance before learning has progressed too far. Examples include concept quizzes that serve as a replacement to a traditional lecture, and in-class research assignments that can lead the instructor to demonstrate the proper way to complete the task if several students encounter difficulty.

By contrast, summative assessment occurs at the end of instruction to evaluate whether a student has learned the intended concepts and skills. Examples of summative assessments in the administrative law context could include a comprehensive research problem or set of problems that incorporates concepts and skills learned throughout the course. Another option may be a sample piece of work product, such as the composition of a comment for a proposed regulation, or production of a guidance document for a client considering recent regulatory changes. The latter tasks could include a research log documenting the sources consulted and the processes taken to produce the final work product.

Final Takeaway

While administrative law can be complex, there are many ways to make it accessible to those unfamiliar with administrative law concepts. The most important are making the topic relevant to the students' daily lives and potential

legal practices, as well as assessing their comprehension as you go along, in case course correction is necessary. ■

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AALL2go EXTRA

Listen to the 2018 AALL Annual Meeting program "Top Ten Tips for Teaching Administrative Law Research," at bit.ly/AM18Adminlaw.

T+T Teaching + Training



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