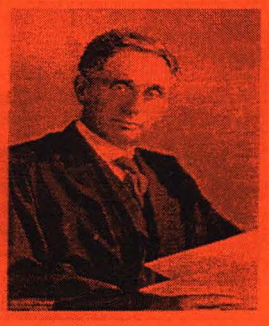
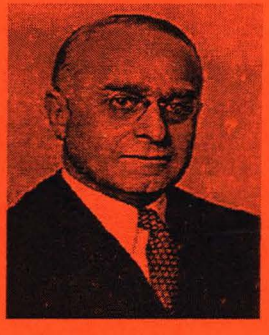
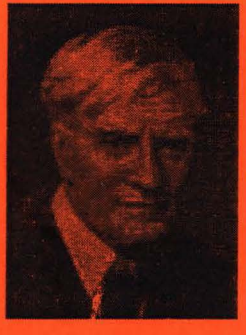
* Administrative Equity *

What is Administrative Equity?


Louis Brandeis **Felix Frankfurter** **Benjamin Cardoza** **Roscoe Pound**

The four main schemers of the Administrative Process

What is Equity Law?

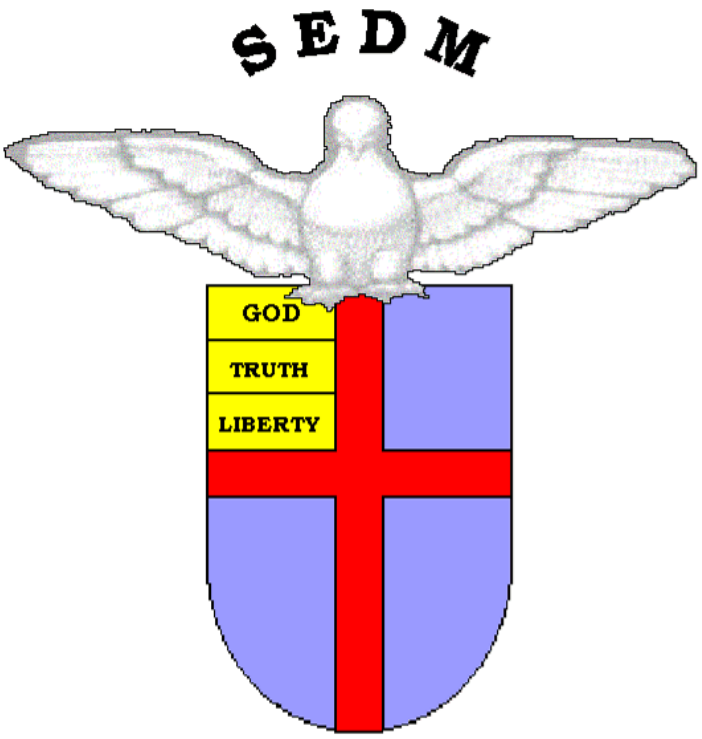
What is Administrative Law?

What is Substantive Law?

Where did the Federal Equity Rules come from?

What are the ten planks of Administrative Law?

Volume 11, November 2002



ADMEQUITX

NOVEMBER

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Introduction to the Administrative Equity System

A. Article III, Section 2 of the Constitution of 1787, "The Judicial power shall extend to all cases, in law and equity."

1. Courts of Equity are constitutional.

2. Failure to understand and recognize the procedures under "ADMINSITRATIVE EQUITY" would be a fatal mistake on your part.

B. Many people will spend hundreds of hours studying "in Law" (common law) and then try to use "in law" (common law) to protect them in the courtroom.

1. We have found that very few people understand the meaning of "Administrative Equity."

2. A court of administrative equity determines your equitable rights.

3. A court of law determines your legal rights.

4. Equitable rights Vs. Legal rights.

5. Equitable rights are vague, imperfect, imprecise, determined by the discretion of the Judge, and are derived from man.

C. Virtually all-current courtroom "trials" are, in fact, nothing more than administrative hearings.

1. In order for the IRS to take you to court they have to input incorrect computer codes in your file thereby converting you into something your not.

2. Administrative Equity courts are not legally bound to recognize legal, constitutionally-protected rights.

3. If you argue your substantive rights, or the law, in a court of administrative equity the judge may dismiss your arguments as frivolous and rule against you.

4. Administrative Equity is controlled by no certain limits or rules as equity floats like a small boat out on the ocean.

D. Administrative Equity has no "defined boundaries" or limited "enumeration of its various principles," as there is no law in a court of Administrative Equity.

1. This court operates contrary to the constitutional mandate for limited government.

2. The Administrative law judge or regular judge can do virtually whatever he deems proper that is consistent with "public policy" so long as his actions can be justified as "reasonable" or at least not "shocking to the conscience."

3. Courts of Administrative Equity are able to legislate from the bench and create "judge-made law."

4. By exercising unbridled power these courts can and very often do by pass your substantive rights that the constitution was intended to prevent from happening.

5. Courts of Administrative Equity do not normally recognize legal arguments or determine legal issues.

6. If you try to defend yourself in this court using legal arguments based on positive law and constitutional arguments you will most likely lose every time.

    a. The judge has virtually unlimited discretion and power over you.

E. With the advent in the 1930's and 1940's of the explosion of Administrative Agencies, more and more people have been lured into surrender their substantive rights for equitable rights in order to get their piece of the government pie.

1. Thus the courts of law have virtually disappeared and the development of courts of Administrative Equity have greatly expanded to fill the void.

F. We have seen many people who have been slammed by trying to win cases in Administrative Equity courts.

1. We have have seen a number of people who are determined to file a tort action against someone who works for the government thinking that they are going to make big money.

    a. Now do you really think that judge is going to let you win against one of his or her own?

b. If the judge lets you win how much can he expect you to put into his next campaign fund?

c. Under the Administrative Equity system, won't the Judge will be expecting something in return for his granting you the benefit of that win?

G. The good news is that there is a way to survive in this nightmare system, by bringing their dark deeds out into light, if you know the procedures necessary to perform that task.

Constitution 1787

↓

Common Law

↓

Equity Law 1912

↓

16th Amendment 1913

↓

17th Amendment 1913

↓

Federal Reserve Bank 1913

↓

March 9th, 1933 Emergency

↓

Erie R.R. V. Thompkins 1938

↓

Administrative Law 1938-1968

Who were the Schemers of the Administrative Process?

A. We are going to look at the four men who worked very hard not only behind the scenes but also out in front. Changing our legal system from being open and relying upon certain specific laws to closing the legal system and creating Equity laws which appear on the surface to have the full force and effect of law but that are completely void of any substance.

B. Louis D. Brandeis (1856-1941). We have collected and read over sixty books about Brandeis. (Exhibit A)

1. Now if you happen to be a Marxist then this man would be up in the top 10 of your idols.

2. If you are not a Marxist then you most likely know little or anything about the life and times of Brandeis.

3. Brandeis' parents fled from Germany to America after taking part in the failed Marxist attempt to overthrow the German government.

4. Brandeis' friends blackmailed President Wilson to get Brandeis appointed to the Supreme Court.

    a. One of Brandeis' friends was Samuel Untermeyer, a lawyer from New York City who helped in this blackmail.

5. After being appointed by Wilson to the Supreme Court, Brandeis would hold Sunday afternoon teas at his home in Washington DC where a number of people would come to have him lecture to them for several hours.

6. Brandeis would usually sail to England once a year and be a guest of the Rothchilds to get his marching orders.

7. Brandeis was behind the scenes, pulling strings with an unlimited amount of money to spread around.

8. Brandeis oversaw the destruction of the Constitutional common law and its replacement with Equity law. He the stake in the heart of common law with his decision in Erie RR Vs. Tompkins, 1938.

9. With the creation of all the new Administrative Agencies during the new deal a new law form started to develop which is referred to as Administrative Law.

C. The so-called great Felix Frankfurter is another one with a dark past. He was founder of the ACLU. (Exhibit B)

1. Felix and Brandeis were very god friends for years; Roosevelt put Felix on the Supreme Court in 1939.

2. Felix also took several trips to England and was also very good friends with Harold Laski, a Marxist from England.

3. Felix was very instrumental in helping FDR create a host of administrative agencies making sure that his people were put in charge of those agencies.

   a. Felix then helped create Administrative Law with all its agents to swoop down upon the unsuspecting public.

   b. While the public focused on WW II, the growth of administrative Law exploded.

4. Equity conquered common law and then Equity merged with Administrative Law and the people never new what happened to them as it took place out of sight behind closed administrative doors.

D. Benjamin Cardozo is another one of those powerful administrative law war lords who had to have it his way or no way, Exhibit C.

1. Cordoza believed that the Federal Government should totally control the economy and limit the amount of money people could make.

2. Cordoza also never minded taking credit for things he did not do, in order to help put forth socialist causes.

E. Roscoe Pound is another one in the Socialist Hall of Fame, Exhibit D.

1. Roscoe has often been referred to as the "Father of Administrative Law."

2. Roscoe, like the other three, made a number of trips to England.

3. Roscoe thought that the people of the United States and the rest of the world should be subject to Administrative agencies run by the various governments and those people should only have those rights and privileges given to them by such Administrative agencies.

4. One note about Roscoe is that he never really tried to hide is real intentions.

5. Roscoe wrote a number of books. More information can be found in "The Life of Roscoe Pound" by Paul Sugre.

    a. Roscoe's books are not very easy to understand and we can understand why not many people would really want to read them.

F. For good reason, we have not only wanted to find out what happened to our legal system, but also who was behind the changes.

1. Louis, Felix, Ben and Roscoe are just four of the "big boys" in this Administrative Equity development process.

2. We have read every Supreme Court case dealing with taxes from 1930 to 1940 and Louis sided in favor of the government every time, even writing that everything should be taxable with no exemptions.

3. We could take up this whole issue just exposing these four, but let's move on.

Homeward Bound

The Zionist Exposition

Brandeis, Louis D. (1856 - 1941)

Brandeis was born in Louisville, Kentucky in 1856 to a family tolerant of Jewish and Christian rituals. In later life Brandeis might be best described as a secular-humanist. Although he completed his secondary education in Germany, he returned to the United States where he studied law at Harvard. After settling in Boston, Brandeis became a successful lawyer spending a good deal of his time pursuing cases with a political bent. In particular, he enjoyed representing small companies against giant corporations, and aiding the cause of the minimum wage against companies opposed to this principle. In 1912, he supported Woodrow Wilson's nomination for Presidency and in 1916, was appointed a Supreme Court judge, the first Jew ever to be appointed to this position.

Brandeis showed little interest in Jewish affairs until the turn of the century when a combination of his professional work and a changing political climate brought about an alteration. He was introduced to Zionism by Jacob de Haas, an English Zionist, and later still by Aaron Aaronsohn, the Palestinian botanist and founder of Nili.

Brandeis became active in Zionist affairs during the First World War, when he accepted the role of Chairperson of the Provisional Executive Committee for General Zionist Affairs. Brandeis had a major impact on the American branch of the Zionist movement, drawing to it a number of sympathisers, improving its organization and its finance.

Whilst he resigned his official position on joining the Supreme Court, he nonetheless worked behind the scenes to influence President Woodrow Wilson to support the Zionist cause. After the war, Brandeis headed a delegation of American Zionists to London where at a conference differences emerged between Weizmann and himself. These arguments over the role of the organization and its pursuit of political activities caused a rift between the two leaders with Weizmann gaining the upper hand. Brandeis withdrew from Zionist activity although he continued to take part in Eretz-Israel economic affairs. Brandeis did intervene from time to time in political matters for example he appealed to Roosevelt to oppose the British partition scheme of 1937 calling instead for the whole area of Eretz-Israel to become a Jewish National Home.

Brandeis represented a rather different genre of Zionism, one born out of the American context that affirmed Zionism as part of American ethnic identity. It was Brandeis who coined the term that "to be a good American meant that local Jews should be Zionists." He died in Washington D.C.in 1941.

Exposition Hall Portrait Gallery

Tax Evasion Vs. Tax Avoidance

" I live in Alexandria, Virginia. Near the Supreme Court chambers is a toll bridge across the Potomac. When in a rush, I pay the toll and get home early. However, I usually drive outside the downtown section of the city and cross the Potomac on a free bridge.

This bridge was placed outside the downtown Washington D.C. area to serve a social cause, getting drivers to drive the extra mile and help alleviate congestion during the rush hour.

If I went over the toll bridge and through the barrier without paying the toll, I would be committing tax evasion.

If, however, I drive the extra mile and drive outside the city of Washington to the free bridge, I am using a legitimate, logical and suitable means of tax avoidance, and I am performing a useful social service by doing so.

For my tax evasion I should be punished. For my tax avoidance, I should be commended.

The tragedy of life is that so few people know the free bridge even exists."

--Justice Louis D. Brandeis

Frankfurter, Felix

Frankfurter, Felix (1882-1965), American jurist and associate justice of the United States Supreme Court from 1939 to 1962.

Frankfurter was born in Vienna and brought to the U.S. in 1894. He was educated at the College of the City of New York (now City College) and Harvard University. He served as assistant U.S. attorney in New York City (1906-10) and in the War Department (1910-14). As a teacher at Harvard Law School (1914-39), he became known as a leading authority on constitutional law. A longtime adviser to President Franklin D. Roosevelt, Frankfurter recommended to the president many of the executives who were selected to administer the agencies established under the New Deal; he was instrumental in writing the Securities Act (1933), Securities Exchange Act (1934), Public Utility Holding Company Act (1935), and other New Deal legislation affecting the railroads and labor.

In 1939 Roosevelt nominated Frankfurter as an associate justice of the Supreme Court; he served on the Court until 1962, when he retired because of illness. Legal and political observers expected Frankfurter to join the liberal wing of the Court; instead, he became known as the leader of the conservative members of that body. His philosophy was one of judicial restraint. He believed that the Court should not interfere with the rulings of state legislatures and Congress, which represent the will of the electorate. His opinions often supported the right of the state and federal governments to self-protection, as in the ruling of 1951 upholding the conviction of 11 leaders of the Communist party for conspiring to overthrow the U.S. government by force. Frankfurter's concern for states' rights is evidenced by his dissent from a Court decision in 1962 requiring reapportionment of state legislatures.

Frankfurter wrote many books and articles on legal matters, including *The Case of Sacco and Vanzetti* (1927) and *Of Law and Men; Papers and Addresses, 1939-56* (1956). *Felix Frankfurter Reminisces* (1960) is an autobiography, and *Roosevelt and Frankfurter* (1968) is a collection of letters exchanged by the two men between 1928 and 1945.

An Overview

Frankfurter was a Jewish U.S. Supreme Court Justice appointed by President Roosevelt. He was a staunch supporter of personal liberties and a lifelong Zionist and activist in Jewish affairs, but was not a strong advocate of rescuing European Jewry.

American Legal Career

American Jewish Supreme Court justice. Graduated from Harvard Law School in 1906 and worked as an assistant to Henry L. STIMSON, who was then U.S. Attorney for New York. Frankfurter followed Stimson to the War Department when the latter was appointed Secretary of War by President William H. Taft. In 1914 Frankfurter was appointed to the faculty of the Harvard Law School, remaining there for 25 years. Frankfurter's area of legal specialization was criminal law and procedure and that led him to fight without success to have the Sacco - Vanzetti conviction overturned. This failure, in part, led Frankfurter and a number of like - minded jurists to found The American Civil Liberties Union.

A Lifelong Zionist

Frankfurter's lifelong support for Zionism led him to represent the Zionist cause for the 1919 Paris Peace Conference. On February 3, 1919, Frankfurter met with Emir Faisal and came to an important, although unfortunately abortive, agreement regarding Jewish - Arab relations in mandatory Palestine. In the letter written to Frankfurter to seal their agreement, Faisal wishes the Jews a hearty welcome to Palestine and claims that the Jewish and Arab national movements complement each other. In 1921, in the aftermath of the Weizmann - Brandeis dispute, Frankfurter withdrew from formal Zionist activities. He continued, however, to work for Zionist causes on an unofficial basis.

Career During Roosevelt's Administration

Frankfurter was a supporter of President Franklin D. ROOSEVELT and saw the New Deal as a culmination of the liberal ideals he had worked for previously. During the 1930s Frankfurter acted as an unofficial advisor to the Roosevelt administration, primarily on social and economic issues. In 1939, Roosevelt appointed Frankfurter to the Supreme Court. During his tenure on the court, Frankfurter became a staunch supporter on personal liberties and freedom of expression. He did, however, support the government's prerogatives in inculcating loyalty among school children by mandating the pledge of allegiance. Although not strictly proper, Frankfurter continued to advise President Roosevelt during his tenure on the court. Because of this, Frankfurter enjoyed almost daily access to the president.

Not a Strong Advocate of Jewish Rescue

Frankfurter also remained active in Jewish affairs activities, acting on an unofficial basis. In 1942, Frankfurter was one of the first to receive information about the Nazi massacre of European Jewry. His information included a copy of the RIEGNER CABLE. In 1943, Frankfurter met with Polish representative Jan KARSKI and expressed his disbelief at the documented information contained in the briefing. Frankfurter did not use his position in the administration to strongly press the rescue issue, although he did make a number of inquiries regarding rescue in the summer of 1942. Suffering a stroke in 1962, Frankfurter retired from the Supreme Court. He died in 1965.

Courtesy of:
Courtesy of the United States Holocaust Memorial Museum.

Supreme Court Justices

Benjamin N. Cardozo (1870-1938)

Benjamin Nathan Cardozo was born in New York City on May 24, 1870, the son of Albert and Rebecca Nathan Cardozo. He was a twin, born with his sister Emily. Cardozo's ancestors were Sephardic Jews who immigrated to the United States in the 1740s and 1750s from the Iberian peninsula via the Netherlands and England. Shortly after Cardozo was born, his father Albert was implicated in a judicial corruption scandal that was sparked by the Erie Railway takeover wars, in which parties contending for the control of the Erie Railway used the judicial system in a way that perverted the law. In early 1868, Albert Cardozo became a Justice of the Supreme Court of New York County (a trial court), and his conduct as a judge from 1868-71 led to the newly formed Association of the Bar of the City of New York to present charges of corruption against him. The Judiciary Committee of the New York Assembly recommended impeachment, and on the day the recommendation was to be read to the Assembly, Albert Cardozo resigned. Albert Cardozo then practiced law until his death in 1885. Rebecca Cardozo died in 1879, and Benjamin was raised during much of his childhood by his sister Nell, who was 11 years older than Benjamin. At age 15, Cardozo entered Columbia University. Shortly after beginning his studies, Cardozo's father died. After graduating in 1889, Cardozo entered Columbia University Law School. Cardozo not only wanted to enter a profession that could materially aid himself and his siblings, but also hoped to restore the family name, sullied by his father's actions as a Justice. After two years, Cardozo left Columbia to practice law. He did not obtain his degree in law, which required attendance in a third year of law school.

From 1891-1914, Benjamin Cardozo practiced law in New York City. He practiced with his brother Albert (Allie) Cardozo, Jr., until Allie's death in 1909. He lived at the family's home with his brother, sisters Nell and Lizzie, and his twin, Emily.

In the November 1913 elections, Cardozo was narrowly elected to the Supreme Court, the same trial court on which his father had served. Cardozo took office on January 5, 1914. Less than a month later, Cardozo was designated to sit on the New York Court of Appeals, the highest court in the state. Cardozo was appointed to a seat on the Court of Appeals in 1917, and was elected to that seat the same year. He was the first Jew to serve in the Court of Appeals. Cardozo remained on the Court of Appeals until 1932, becoming Chief Judge on January 1, 1927. His tenure was marked by a number of original rulings, in tort and contract law in particular. In 1921, Cardozo gave the Storrs lectures at Yale, which was later published as The Nature of the Judicial Process. This book enhanced greatly Cardozo's reputation, and the book remains valuable today for the light it throws on judging. Shortly after the Storrs lectures, Cardozo became a member of the group that founded the American Law Institute, which crafted a

Restatement of the Law of Torts, Contracts, and a host of other private law subjects.

In early 1932, Justice Oliver Wendell Holmes resigned from the Supreme Court due to advancing age (Holmes was 90.) Cardozo, then 61 (Holmes's age when appointed to the Supreme Court), was nominated by President Herbert Hoover to the Court. Less than two weeks later, the Senate unanimously approved Cardozo's nomination. In Fall 1932, in the midst of the Great Depression, former New York Governor Franklin Delano Roosevelt was elected President. FDR would, beginning in March 1933, usher in the New Deal. Various aspects of the New Deal were subject to constitutional challenge almost immediately.

The Court was deeply divided during the time Cardozo was a member. Cardozo, Louis D. Brandeis and Harlan Fiske Stone were considered the members of the "progressive" faction of the Court. The "Four Horsemen" (evoking the notion of the Four Horsemen of the Apocalypse), Pierce Butler, James McReynolds, George Sutherland, and Willis Van Devanter, were considered as the "reactionary" faction of the Court. Owen Roberts and Chief Justice Charles Evans Hughes were swing votes. Although this division of the members of the Court is misleading in some important respects, it is also relatively clear that the New Deal cases brought to the Court deepened and sharpened this divide. In two early cases concerning state regulation of the economy, Home Loan Association v. Blaisdell and Nebbia v. New York, Court by 5-4 votes held constitutional state actions against challenges based on the due process clause of the 14th Amendment. The Court in 1936 held unconstitutional a minimum wage law in Morehead v. New York ex rel. Tipaldo when Justice Roberts joined the Four Horsemen. A year later, after FDR's reelection, and the announcement of his Court-packing plan, the Court, with Justice Roberts silently switching, voted 5-4 upholding the minimum wage law of the state of Washington in West Coast Hotel v. Parrish. With regard to national regulation of the economy, the Court was initially largely united. Cardozo was the only dissenter in Panama Refining Co. v. Ryan, which concerned delegation of legislative authority to the executive branch. And on May 27, 1935, later called "Black Monday," the Supreme Court issued three unanimous opinions holding New Deal acts unconstitutional. The next year, the Court divided in Carter v. Carter Coal Co. Six members of the Court held unconstitutional as a violation of the commerce clause federal regulation of coal mining wages and hours. Cardozo wrote a dissent suggesting that the formal distinct between production/commerce was untenable, because "the law is not indifferent to considerations of degree." The next year, in NLRB v. Jones & Laughlin Steel, Chief Justice Hughes and Justice Roberts joined Cardozo, Brandeis and Stone to reverse Carter and uphold the regulation of employees involved in production. Jones & Laughlin Steel and Parrish, along with the May 1937 decisions upholding the Social Security Act were the "switch in time that saved nine." The Social Security Cases were written by Cardozo.

In late 1937, Cardozo suffered another heart attack, and in early 1938, he suffered a stroke. He died on July 9, 1938.

Of the six children born to Albert and Rebecca Cardozo, only Emily, married, and she and her husband did not have any children. As far as is known, Benjamin Cardozo led the life of a celibate. As an adult, Cardozo no longer practiced his faith, but remained proud of his Sephardic Jewish heritage.

Further reading: Over four decades in the making, Andrew L. Kaufman's Cardozo is an excellent history of Benjamin Cardozo and the times in which he lived. A shorter study that is also quite valuable is Richard Polenberg, The World of Benjamin Cardozo.

THE LIFE OF ROSCOE POUND

By

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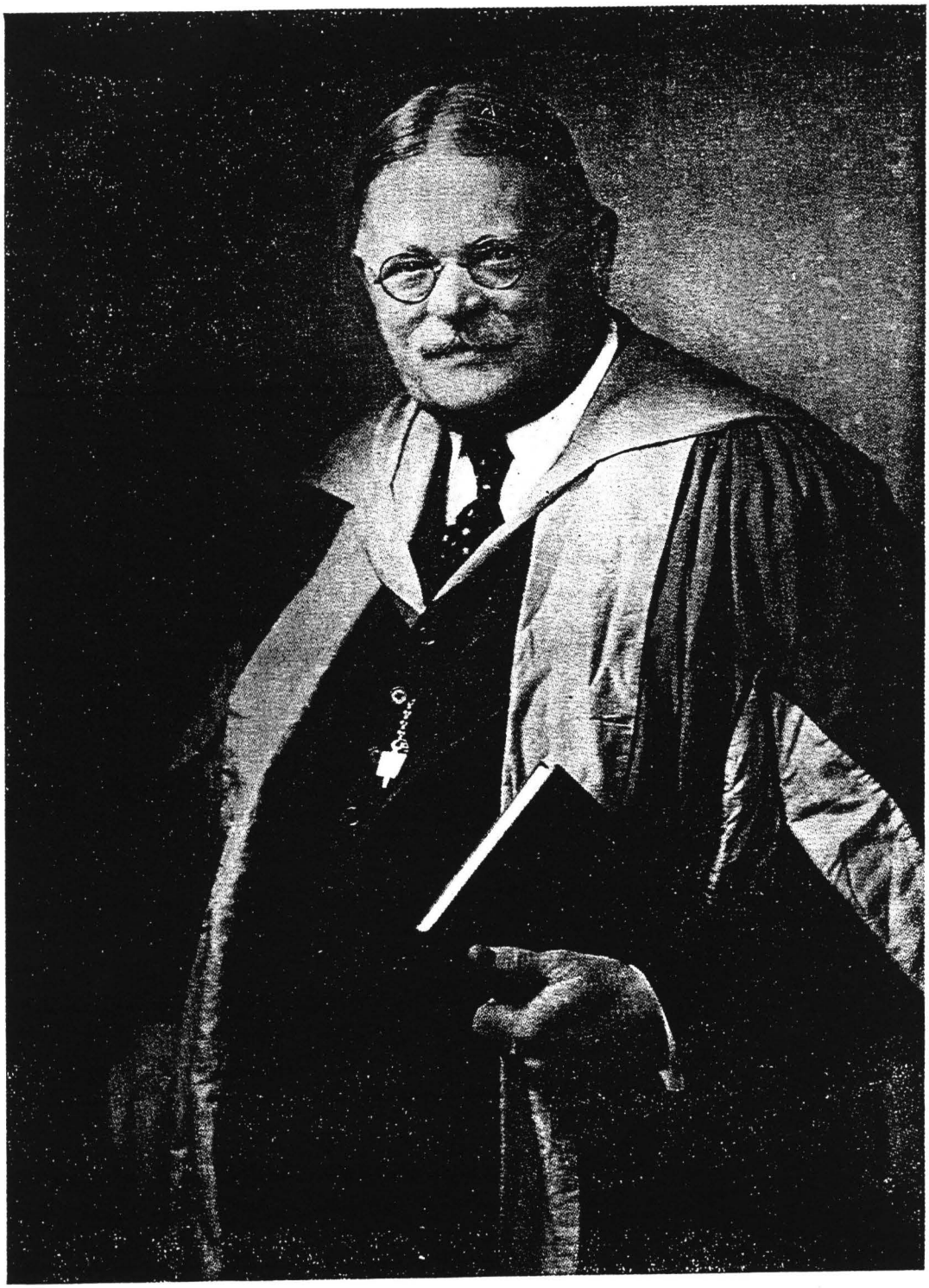

ACADEMIC PORTRAIT

especially during the later empire; but very few statutes prescribing the method of this administration are to be found in the compilations of Gaius, and even in the Code of Justinian, *Administrative law* was hardly present at all. Looking at the history of Anglo-American law down to recent times, the great effort to secure adequate administrative law, the *Star Chamber effort*—was a failure. In striking contrast, the *droit administratif* of France and elsewhere on the continent has been a substantial success.

Administrative law in this country and in England as it began to develop almost at the very start of the 20th century, seemed likely to be crushed by the mere weight of indiscriminate court practices on the one hand, or to grow into a totalitarian monster through the lack of traditional safeguards for individual rights of any kind, on the other. Roughly, from 1900-1925 the growth of administrative law was unduly repressed, largely because conservative judges wanted to retain all the traditional powers of the regular courts, in appeals from administrative bodies, in matters of both law and fact. A radical minority on the other hand swung the pendulum to the other extreme, and was ready to make a *Frankenstein* of administrative law, operating almost entirely free from our traditional notions of due process of law, and from the power of regular courts on appeal to reverse administrative decisions where the essence of due process had not been followed. The middle ground (strange as it may seem) of giving administrative bodies new powers in determining facts under the law, and freeing them from many of the needlessly obstructive common law rules of evidence and procedure while retaining the basic common law traditions of impartiality and the fair trial in a substantial sense—this was ignored, while the battle raged solely between the two extremes, substantially no freedom for administrative law at all on the one hand as against unrestrained license and tyranny for administrative law on the other. Due largely to the differences of the so-called conservative judges of the time as against the liberal ones so far as questions of property, freedom of contract, and personal rights were concerned, the split in administrative law was rigidly between these two extremes in the actual court decisions. With rare exceptions, decisions did not turn at all on this fair and necessary ground of whether or not the administrative process had proceeded impartially in keeping with our basic and general ideas of due process of law—adequate notice of the trial, a reasonable opportunity for both sides to present their own evidence and their own views, along with a competent and impartial judge (or judges) to

hear the case. Once you have these fundamentals, then reasonable freedom in doing their job, along with freedom from technical rules of the regular courts that hamper the administrative work was of course desirable.

Since the leading judges (and most of the law teachers and *intelligentsia* generally) were in one or the other of these extreme camps, the real question of building a competent and fair group of administrative courts was sadly neglected. The bar generally was very fretful of arbitrary administrative action, especially incident to the vastly increased administrative activity (called by its haters "burocracy") that followed 1933, but it did not have competent representatives who would defend administrative law, but attack lawless elements in any administrative system.

Pound himself, largely in his association with Felix Frankfurter, then Professor of Administrative Law at Harvard, had cordially supported the Holmes and Brandeis dissenting opinions in defense of allowing practical scope for the work of administrative bodies. Later when the pendulum swung the other way, and administrative bodies ran wild, ignoring the requirements of a fair trial, and proceeded tyranically, Pound attacked this as vigorously as he had the excesses of the opposite-view. He became as it were the unofficial representative of practicing lawyers and private citizens everywhere in their demand for relief from administrative tyranny. In an earlier day he had first come to the attention of the country generally through his insistence on procedural reform in the regular civil courts. With the New Rules of Federal Procedure (and similar changes in most of the state courts) following 1939, this long fight for procedural reform was won. Pound spent himself without limit to insure impartial trial in administrative bodies, and adequate review of their findings by regular courts, especially following the great increase in administrative activities of 1933. With the passage of the Federal Administrative Procedure Act of 1946, this battle for an adequate administrative law has been substantially won. Due partly to circumstances, but mostly to his own amazing courage, undoubted learning and untiring energy, Pound really carried this last battle almost alone. He has given a sound administrative law to the American people. Without him administrative law might have gone to one vicious extreme or the other, and the administrative achievement of our day would have been another failure for Anglo-American law much as the *Star Chamber* effort of 300 years before had been such a total failure.

In a sense, the need for adequate administrative law in common law countries was first adequately stated by the great Lord Bowen in the Queen v. County of London and London County Council (1893).

There commented on in 1911 in a statement by the Master of the Rolls, Sir H. H. Couzins Hardy (as given in the ModernTimes, for May 4, 1911).

"What is the ordinary rule of construction when construing Acts of Parliament and other documents? It is, that if the language is ambiguous and admits of two views you must not adopt that view which leads to manifest public mischief. Here is a broad scheme of metropolitan taxation and rating by which the parochial ministerial officers are empowered in the first instance to place values on hereditaments for the purpose of taxation in the broad sense. In a free country the very essence of such a system must be that there should be an appeal to some body who can say whether those officers are doing what is just. If no appeal were possible, I have no great hesitation in saying that this would not be a desirable country to live in, where every parochial officer might do as he liked in this matter. It is quite true that there is enough difficulty in appealing as it is; but if there is to be no appeal at all possible the system would be intolerable. Therefore it is of the essence, the pivot of the system, that there should be a right of appeal."

"The Master of the Rolls, who with Mr. English Harrison, K. C., responded for the Bench and the Bar, said that time was when the great danger against which the Judicaure had to guard was the encroachments of the Crown. Happily there was no longer that danger; but there was another danger which was much more real than that—namely, encroachment by the Executive. He had seen signs of attempts by the Executive to interfere with the Judiciary, and against all such attempts he thought he could pledge his colleagues and himself to offer a strenuous resistance (Cheers). There was another danger connected with the Executive. In recent years it had been the habit of Parliament to delegate very great powers to Government departments. The real legislation was not to be found in the Statute-book alone. They found Certain Rules and Orders by some Government departments under the authority of the Statute itself. He was one of those who regarded that as a very bad system and one attended by very great danger. For administrative action generally meant something done by a man whose name they did not know, sitting at a desk in a Government office,

very apt to be a despot if free from the interference of the Courts of Justice."

Pound's contributions to the law have been very great. Necessarily, his efforts in some fields, as in that of legal philosophy itself—are difficult to assess in a literal and precise way. But in building and saving an adequate system of administrative law for this country in the first half of the 20th century he has created a significant part of the whole structure of legal institutions in a permanent sense as very few other men have ever done anywhere. One thinks at once of Coke's work in establishing the supremacy of the common law in England, and of Mansfield's later work in building the law merchant into that system. Pound's work for administrative law in this country (with very great influence in the same struggles in other countries) is a later and not unworthy companion to these high achievements of the past.

Of course Pound's book on *"Administrative Law"* (1942) consisting of his lectures at the University of Pittsburg in 1940 is the single presentation of his views in summary fashion. But his power in bringing about justice according to law in the whole field of administrative law is found more vitally in his many articles on the subject, his addresses through the years before groups of both lawyers and non-lawyers, his personal letters to and his numberless talks with senators and representatives in Congress, Judges, administrative officials themselves, and I think most important of all, his testimony before committees of the Senate and House who were actually drafting the Federal Administrative Law of Procedure Bill, and particular statutes that envolved administrative law in their operation.

Perhaps it is easier to realize the scope of Pound's accomplishment in administrative law when we remember that nothing like the Federal Statute on Administrative Procedure obtains in any of the separate states, although there are similar statutes in the separate states, that followed the Federal Rules of Civil Procedure in 1939. And,, in spite of the possible excesses of Lord Hewart's book *"The New Sespotism,"* (1929) it seems clear from *Scott v. Scott, The King v. Minister of Health, Local Government Board v. Arlidge* and many other cases, as well as from the absence in England of any statute similar in scope to our Administrative Procedure Act of 1946, that Great Britain itself has not yet secured, in a dependable sense, justice according to law in the administrative field now, more than she did under the Stuarts, with the violent tyranny that raged under the authority of the courts of the Star Chamber. In a word,

the first dependable success for the administrative process as a system of court procedure came in our federal government under Pound's hammer blows, not in the several state governments or in Great Britain where one would expect it to come first.

A second field of creative accomplishments is that of the federal system in international law. Of course the federal device in government in general is not new, and is not literally new even in international law. Furthermore, as in many other incidents, others have worked along the same line. If one turns, however, to all literature in international law which received such an impetus after the League of Nations had substantially failed, and the tensions and conflicts between nations based on absolutist ideologies began to dominate the world in the early 1930's, one would be amazed to see how little if any reference to the federal principle was found in world law or world government, until Pound also began to work in this field of national and international accomplishment following his withdrawal from the Harvard deanship in 1936.

While the emphasis on federalism in international affairs is to the fore in Pound's thought so far as a particular device goes, his basic teaching here, which is so important, is the very approach that he uses for the common law generally. He wants the law to take account of the actual patterns of living so that the development of the law will roughly keep pace with the way people live and the one will be honestly and usefully responsive to the other.

Nowhere is this scheme for parallel working of a system of law and patterns of living more important than in international affairs. And here perhaps, at least up to very recent times, we have had more artificialities and more needless discrepancies between theory and practice than in any other field of the law. If we think of Grocius as developing international law for modern times, we must also remember that his whole scheme was predicated upon the moral responsibility of actual human beings as heads of states. For Grocius, international affairs was indeed a matter of rights and duties of the several heads of states in a highly nationalistic scheme of separate states. At the present time, we still have some dictatorships which roughly fit into that pattern, and various anachronisms, particularly in the field of diplomacy, reflect that notion of the individual, standing for the state itself, in international affairs. When King Lear spoke of "France" and "Burgundy", he meant the King of France and the Duke of Burgundy, but this same personification in less degree has survived to our own day. For instance, after 1700,

William III in England had a chief minister who was roughly responsible to Parliament, yet William himself was his own foreign minister and the entire country felt it proper for him to be the responsible one in foreign affairs, much as he was also the responsible head of the army. Certainly Queen Victoria and even later sovereigns in England have had a very real part in foreign affairs long after responsibility for everything else was in the ministers who were answerable to Parliament and not to the sovereign.

In his address at Leyden in 1922 on "Philosophical Theory and International Law", Pound makes his first detailed exposition of this view and he has elaborated it and developed it between the World Wars and especially during the development of the United Nations and all the discussion since the end of World War II. International law and international practice must be kept abreast of the actual way in which people live together as between nations. Pound's philosophy of law is particularly well adapted to meet this problem since he puts the individual man and the individual claim or desire at the center of all his thinking. Though people may owe so-called allegiance to a single nation, they certainly are also individuals living on this earth. Our notions of sovereignty and the relations of nations to each other are certainly changing and changing very rapidly. Pound wants the legal system, as it affects everyone who lives in the world, to take account of the way people live in this common sense for the whole world and the actual activities of individuals as well as so-called separate nations as they change and shift from year to year in the daily experiences of human beings, whatever may be the particular groups which bear the big labels at the time.

In a philosophical sense and a sociological sense, this is indeed the crux of international law. Furthermore, if a kind of world law is eventually developed through the wise changes and honest needs of separate systems of law, this adjustment again, of rules of law to ways of living, will be the basis of such a later system itself.

There must be vision in the consideration of Dean Pound's legal writings. By far the greater part deal with jurisprudence, legal philosophy and comparative law. Strange as it may seem, he began to write in these fields before he did on particular subjects of the private and public law. And this was true, although he began as a practicing lawyer, not as a teacher. He was absorbed in the immediate contests of a general practitioner, and a very young general practitioner just getting his start, when he did his first writing in

jurisprudence and began his first part-time teaching in Roman law.

Perhaps his college work in the exact sciences and the classics had something to do with this. Certainly it was accentuated by his private reading in the year books, and in jurisprudence and Roman law during his year at Harvard. But perhaps most of all it was fore-shadowed by the cast of his mind. Although deeply interested in practice through his long years of toil at the bar, he was never absorbed by it as other men have been. He never acquired a lawyer's zest for winning a case and for triumph in his workmanship, as most successful lawyers do. Behind the court victory for Pound was always the ultimate question of how things came about as they did. He could never find simple happiness in his success at the bar. He always had to take the cases apart afterward and try to see what made them tick. There was no ultimate happiness for him by doing the day by day work of his profession. In the midst of all the pressure of office practice and the great tension of court room contest, Pound remained the philosopher, in the sense that immediate result did not satisfy him, nothing but the pursuit of the ultimate or basic reasons for legal results could give him the satisfaction he craved.

Chronologically, therefore, we should begin with Pound's jurisprudential writings and take his excursions into private law problems in a purely incidental way. Pound's own methods and his own development would seem to require this. But I doubt if this will present as true a picture as it will if we consider the particular subjects first. Pound's approach to jurisprudence was never philosophical in contrast with the factual or objectively sociological.

He built up his philosophy and the analytical power of his jurisprudence through the actual claims of litigants. Thus for Pound's jurisprudence, it was fortunate that he began as practitioner and had a very long and severe discipline in the active practice. In keeping with this also, we would do well to consider his writings on different subjects first, for the strength of his jurisprudence is grounded in his professional mastery of the private and public law as administrated by the courts.

Much of Pound's original work in particular topics of the law as in the case of other modern law teachers in this country, is found in his case books. This, of course, is not presented in narrative form but the work is there as shown in the footnotes and in the selection of the cases themselves. While still at Nebraska, he published a little case book in *Code Pleading* and later he published an editon of Ames and Smith *Cases on Torts* (1926) and more than

one edition of his own case book in Equity (particularly, *Equitable Relief Against Torts,* Second Edition, 1934). In addition to these under his own editorship for a large publisher upon leaving the Harvard deanship in 1936, he published his own book in the field of court organization, *Organization of Courts,* (1940), and *Contemporary Juristic Theory,* (1940). In this same series, as editor, he was responsible for the publication of several other volumes dealing with the whole field of court organization and improvement in court organization.

From the first in his career as a lawyer, people thought of Roscoe Pound for his inquiry into law as a science and not for his concern about particular cases in the sense that a practicing lawyer usually is absorbed in whatever litigation commands his attention at the moment. There are amusing and somewhat touching illustrations of this from the days when he was fighting to keep alive during the depression of '93 and the great difficulty for a young lawyer to organize a business and (perhaps of more importance, to collect his fees from clients who had been forced into bankruptcy). The whole community, indeed the whole state simply did not have any money in the years following the Panic that hit this country and the drouth that hit west Nebraska particularly, in the summer of 1893. The severe depression that came in the agricultural states all through the Twenties finally engulfed the entire nation and coming to a climax in 1933—all this does not help even to give a glimpse of what the Panic of '93 was, especially in the towns of Nebraska where the entire communities were built up within a few years upon agricultural wealth and the great expansion of credit. People who were worth a hundred thousand dollars or, in some cases, a million dollars, within a few months were really insolvent. Usually they were not forced into legal bankruptcy, partly because modern bankruptcy had not been established by Congress, and partly because their creditors knew that extreme pressure would be futile. It was not a matter of a single failure with substantial prosperity for the whole community. No one had any money. There was nothing to do except live from hand to mouth and from month to month until gradually persons in different walks of life could get a new foothold and acquire assets that could be reached.

These were the conditions under which Pound spent his difficult years as a young lawyer. But under these conditions, his associates at the bar, his old teachers at the university, his friends in the East and elsewhere, all recognized that this struggling fighter in the imme-

diate contests of the law had his eye on quite different issues. Whatever his work in private law might be, either as a writer or as a practitioner, all his work and all his writings would ultimately fit into this pattern of a science of law which should transcend the particular contest in the courts and the separate claim of the litigant.

Even as a student for the Doctor's degree in Botany, Pound's minor was in Roman law. And even before his writings on such private law subjects as Insurance, Civil Procedure, and the somewhat humorous problem of Canine law, there came the initial arrangement of his proposed lectures in Analytical Jurisprudence. This notion of a dependable objective science of law grew with him and deepened in his thought along with his individual studies of private law such as ultimately contributed to his science of law, either directly or indirectly.

Pound wrote a number of little books of a critical nature. Perhaps he is best known to a wide public by these books, and by his law review articles and by his public addresses more than by his other writings; all of these little books were first given as public lectures and they have some of the directness and simplicity of statement that usually goes with the spoken word, especially in the field of professional writing, like the law where a book that is prepared only in written form is usually loaded down with footnotes citations by way of authority. Indeed in the first book of this kind, *Introduction to the Philosophy of Law* (the Storrs lectures at Yale in 1920) Pound published his lectures without adding any footnotes. His other published lectures have some footnotes, but they are exceedingly few compared with the proper and usual documentation of a technical legal article or textbook or a law review. Pound's lectures at Dartmouth in 1922 were also published under the title *Spirit of the Common Law* while his lectures at Cambridge University, England, in 1921 appeared as *Interpretations of Legal History*. Other such lecture series given on special occasions and under endowed foundations were *Law and Morale* (1924), *Criminal Justice in America,* (1929), *Law and Contemporary Problems* (1939), *The Formative Period of American Law* (1931). The more technical side of his juristic thought (apart perhaps from his *Interpretations of Legal History*) is found in his law review articles in which his several doctrines are developed one by one until they form a pattern developing the entire system which he now plans to put into a final book dealing with his juristic thought in sociological jurisprudence. Pound's more general books such as his *Readings in the History and*

Administrative Articles

A. The Administrative Law has taken off and grown so fast that there is a Administrative Law Review Journal dedicated to the development and expansion of Administrative Law (See Exhibit A).

B. Another example is Exhibit B, "Duke Law", The Duke Law Journals thirty-first Annual Administrative Law Conference.

C. This is only two of the many places promoting the expansion of Administrative Law.

D. We are not just talking about the Feds but also the state level, the county level, the city level, and the township level.

    1. All these agencies must one way or another tax you to service with lots of regulations being passed to control you.

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American Bar Association
Section of Administrative
Law & Regulatory Practice

ANNUAL REGULATION OF BUSINESS FOCUS: PRIVATIZATION

Private Parties, Public Functions and the
New Administrative Law
Jody Freeman

Public Purpose and Private Service:
The Twentieth Century Culture of Contracting Out
and the Evolving Law of Diffused Sovereignty
Daniel Guttman

How Changes in the Federal Register Can
Help Improve Regulatory Accountability
Robert W. Hahn

RECENT DEVELOPMENTS TELECOMMUNICATIONS SYMPOSIUM

Introduction
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Paradoxes of Racial Stereotypes, Diversity and Past Discrimination
in Establishing Affirmative Action in FCC Broadcast Licensing
Leonard M. Baynes

Negotiating Competition
Lawrence R. Freedman & Richard L. Davis

DUKE LAW

The Duke Law Journal's Thirty-First Annual Administrative Law Conference

"Politics and Policy: Presidential Administrations and Administrative Law"

March 5, 2001 Duke University

- **Conference Schedule**
- **Directions**

In which direction will new Presidential cabinet members lead their Federal agencies? Perhaps more importantly, what role does politics play in administrative rulemaking? A panel of distinguished national experts on administrative law will tackle the latter question Monday, March 5, at the Fuqua School of Business' Geneen Auditorium during *Duke Law Journal's* 31st Annual Administrative Law Conference.

One of the most prestigious scholarly forums devoted exclusively to administrative law, past conferences have attracted participants such as Justice Antonin Scalia, Judge Kenneth Starr, Judge Patricia Wald, Judge Abner Mikva, Reed Hundt, Walter Dellinger and Cass Sunstein.

This year's conference, "Politics and Policy: Presidential Administrations and Administrative Law" features six panelists speaking on issues relating to the change in political leadership at the White House. The panels feature:

James F. Blumstein, Vanderbilt University Law School

Lisa Heinzerling, Georgetown University Law Center

John O. McGinnis, Benjamin N. Cardozo School of Law

Robert V. Percival, University of Maryland Law School

Jim Rossi, University of Texas at Austin School of Law

Mark Seidenfeld, Florida State University College of Law

Duke Law Journal's 31st Annual Administrative Law Conference is a day-long event which is free and open to the public. For more information, e-mail publications@law.duke.edu.

Conference Schedule

Administrative Law

A. The term "administrative law," while well recognized by judicial and other authorities, has no authoritative definition in English.

1. The term "administrative law" embraces all the law that controls, or is intended to control, the administrative operations of government.

   a. It includes the law, which provides the structure of government and prescribes its procedure, not the substantive law, to control administrative agencies and safeguard your equity rights.

   b. It embraces the law, which governs the existence and operation of the courts aside from their procedure in the actual progress of litigation, established the executive agencies and governs their procedure, and determines personnel policies in all branches of the government.

B. "Administrative law," is concerned with the legal problems arising out of the existence of agencies which to a noteworthy degree combine in a single entity legislative, executive, and judicial powers, which were traditionally kept separate in the American system of law.

C. The chief concern of administrative law, as of all other branch of civil law, is the protection of private rights, and its subject matter is therefore the nature and the mode of exercise of administrative power and the system of relief against administrative action.

1. Lawyer's administrative law, embraces the law which is pertinent to the baring of administration upon private persons and property as that part of the law which fixes the organization and determines the competence of the authorities which execute the law, and indicates to the individual the remedies for the violation of his rights.

2. While administrative law is concerned with the impact of the administrative process on private rights, in certain areas there is applicable a specific principle that particular administrative agencies are created to protect the public interest and not to vindicate private rights.

   a. Public rights and private rights are often intermingled.

   b. Rights at some times are characterized by the body of law from which they are derived, but such distinction between public and private law is less sharp and significant in this country, than in the continental practice.

c. Perhaps in this country the most usual differentiation is between the legal rights or duties enforced through the administrative process and those left to enforcement on private initiative in the law courts.

d. Federal law has largely developed and expanded as public law in this latter sense.

e. It consists of substitution federal statute law applied by administrative procedures in the public interest in the place of individual suits in courts to enforce common-law doctrines of private right.

f. This evolution, sharply contested, and presenting many problems, has taken place in many fields.

D. Administrative law is concerned with officers and agencies exercising delegated powers and not with the exercise of the constitutional powers of the executive.

1. The chief executive as well as other executive officers may be made a delegate of powers by the legislature and the exercise of such powers by the President or Governor is within the scope of administrative law as here considered.

2. Administrative law is concerned with and results from a fusion of different types of governmental power in certain public officers which are a part of the executive branch of the government or act as agents of the legislative branch, yet who exercise powers similar to those exercise by courts, including a coercive power over individuals, since the exercise of this type of power by this type of officer runs afoul of fundamental and traditional tenets of American governmental faith.

3. The necessity for a separate and distinct classification of "Administrative Law" finds its principal source in this conflict and the need for the focusing of the glass of law as a rule of order upon the opposing elements to see clearly how may be obtained the maximum of governmental efficiency without reducing protection of individual life, liberty, and property below a desirable minimum.

E. Administrative law is of four kinds:

1. Statutes setting up administrative authorities, either by creating, or by confiding the powers and duties to existing, boards, commissions, or officers, to amplify, apply, execute, and supervise the operation of, and determine controversies arising under, particular laws in the enactment of which the legislature decided for matters of convenience or for quicker or more efficient administration to withhold the controversies, at least in the firs instance, for the courts of common law.

2. Body of doctrines and decisions dealing with the creation, operation, and effect of determinations and regulations of such administrative authorities.

3. Rules, Regulations, or orders of such administrative authorities enacted and promulgated in pursuance of the purposes for which they were created or endowed.

4. Determinations, decisions, and orders of such administrative authorities made in the settlement of controversies arising in their particular fields.

F. The problems of administrative law may be viewed as those of internal administration and those of external administration.

1. The former considers the legal aspects of public administration on its institutional side, that is, as a going concern.

2. Administrative law is concerned with the problems of administrative regulation, rather that with those of administrative management, and so it is the problems of external administration.

3. The law of external administration is concerned with the legal relations between administrative authorities and private interests.

4. Many of the principles of external administrative law are often applied in situations involving internal administration, and certain aspects of internal administration, such as the suspension or removal of officers and employees.

G. Administrative law is both general and special.

1. The largest body of administrative law is special administrative law.

2. Special administrative law is that law which is provided for and derived from the activity of a particular administrative agency.

H. Administrative law is not one of the traditionally recognized parts of our law, such as the criminal law, the common law, and equity.

1. It has its origin in legislation and has grown piecemeal by the enactment, application, and construction of specific statutes in regard to particular agencies.

2. The agencies which gave rise to administrative law had their birth in necessity, have become an essential and indispensable part of our state and federal governments, and have created a new sphere of governmental activity embracing in itself all three aspects of governments powers, legislative, executive, and judicial.

3. They are, in fact, sometimes referred to as a "fourth branch of government" or a government in miniature.

4. Administrative law has been termed one of the most important movements in our laws.

5. Legal scholars have rightly compared it to the rise of equity.

6. Private as well as public rights more and more are coming to be determined by administrative proceedings.

I. One of the problems with Administrative law is these agencies take their administrative procedures which are meant to be applied to a specific class of individuals or entities and apply those laws, rules, and regulations to others outside their jurisdiction.

J. Let's take the IRS for example, they have to trick and threaten people into filing some kind of a return that does not even apply to that individual if he or she is not involved in certain activities.

1. If you have read the other "Dispatches" and we have been working with you then you have seen this happen to you.

K. A special agent visited one of our friends just a few weeks ago.

1. Our friend asked the Special Agent if he was there to enforce the Income Tax Laws or the Internal Revenue Laws and the Agent replied "Title 26."

2. Our friend then asked if the Agent had ever read Title 26 and the Agent replied "well its pretty lengthy you know".

3. The IRS has all these administrative Agents running lose tricking and threatening people who don't even have a clue as to what they are doing or who the IRS administrative law they are trying to enforce actually applies to.

4. The more blatant the IRS Administrative blunders backfire against them the more personal they lose the lower they have to drop their standards and the faster they have to train more agents to replace the ones they have lost.

   a. These new kids are totally befuddled when people are not scared of them and start grilling them about their non-positive administrative law.

   b. For some reason they also get upset when you hold the accountable for their administrative blunders.

Equity Contracts

A. Administrative Equity pops up everywhere including Exhibit A.

1. Exhibit A, is a simple release given to someone we know to take home and have his parent/guardian sign it so he could play football.

2. Look at lines five and six where it says in law or equity.

   a. Equity is involved in most contracts you get involved in.

B. What is Equity?

1. The next page after Exhibit A is a section about Equity.

C. When you start studying Equity you will soon find out that equity is another fine gift that England gave us to help us destroy ourselves.

1. Now you see why those four stooges made those trips to England to get those professionals in England to give them their input into the development of Equity law in this country.

Release

We, the undersigned, student, and parents/guardians of _____, do
(name of student)
hereby release, waive, discharge and covenant not to sue the
School District Board of Education, its individual members, Superintendent, principals, administrators, employees, agents or anyone acting on its behalf, from any and all liability, claim, demand, action or cause of action, of whatever kind or nature, either in law or equity, arising from or by reason of any bodily injury, personal injury or mental injury, known or unknown, including death, resulting from, or to result from

_____'s participation in sports and/or any other extracurricular activity
(name of student)
on behalf of or in the name of the ı School District Bd. Of Ed.

We hereby assume full responsibility for and risk of bodily injury, personal injury or mental injury or death due to _____'s participation in sports
(name of student)
and/or other extracurricular activities on behalf of or in the name of the

School District Board of Education.

We expressly agree that this release is intended to be as broad and inclusive as permitted by the laws of the State of Ohio or any other state in which said student may be injured and that any portion of this release is held invalid, it is agreed that the balance shall, nevertheless, continue in full force and effect.

We further state that I/we have carefully read the above release and know the contents of same and sign this release of our own free act.

Dated: _____ _____
Parent/Guardian

Dated: _____ _____
Parent/Guardian

Dated: _____ _____
Student

Equity

A. All great systems of jurisprudence have a mitigating principle or set of principles, by the application of which substantial justice may be attained in particular cases wherein the prescribed or customary forms of ordinary law seem to be inadequate.

B. From the point of view of general jurisprudence, "equity" is the name, which is given to this feature or aspect of law in general. However, the term "equity" has a variety of meanings.

1. The word describes a system of jurisprudence, and it is employed to designate the principles or standards of that system.

2. Equity is a complex system of established law.

3. "Equity" is used to describe the standing of a party to claim relief, the merit of his claim being dependent upon the showing as to his ability to have prevented the prejudicial situation in which the litigants find themselves.

4. In a juridical sense, the term "equity" is employed usually in contradistinction to strict law.

5. "Equity jurisprudence," said Mr. Justice Story, "may properly be said to be that portion of remedial justice, which is exclusively administered by a court of equity, as contradistinguished from that portion of remedial justice which is exclusively administered by a court of common law."

   a. The terms "legal" and "equitable" are incorporated in the fiber of legal thought.

   b. A court of law, as well as a court of equity, will apply equitable principles.

   c. An equity court is less hampered by technical difficulties than a court of law, and is not hampered by the restrictive and inflexible rules, which govern common-law courts.

6. The features which distinguished equity are traceable to its origin in the purpose to do complete justice in a case where a court of law is unable, because of the inflexibility of the rules by which it is bound, to adapt its judgment to the special circumstances of the case.

7. It is a maxim of equity that it regards substance rather than form.

8. Courts of equity are not inquisitorial, but remedial. It is not their function to assist in creating causes of action where none are alleged, nor can a court of equity create rights; rather, it is limited to determining what rights the parties have, and whether, or in what manner it is just and proper to enforce them.

C. The equitable jurisdiction of the court of chancery of England from the practice of petitioning the King, as the fountain of justice, for relief in those particular cases where the positive law, lex scripta, was deficient.

1. The number of these petitions, the grant of which was esteemed not a matter of right, but of grace and favor, became so great that cognizance of them was transferred to the chancellor, and afterward the growth of equity jurisdiction was steady and rapid, although it was constantly opposed by the common-law judges.

2. The High Court of Chancery as a tribunal separate and distinct from the courts of law was abolished, and the Supreme Court of Judicature, consisting of two permanent divisions, the High Court of Justice and the Court of Appeal, was created in 1873.

3. The High Court of Justice as transferred the jurisdiction formerly exercised by the High Court of Chancery, the superior courts of common law, and other superior courts.

4. By this amalgamation one court having complete jurisdiction, the duty of which was to administer one system of law in place of the two systems previously known as "law" and "equity," was established.

5. To this end the High Court of Justice was not only empowered, but ordered, to administer justice according to the principles of law and equity together, and to give relief according to such principles concurrently.

D. The foundation of modern equity jurisprudence was laid by Lord Nottingham, and Lord Hardwicke measurably matured its several departments.

1. By these two great judges the doctrines of equity were disentangled from narrow and technical notions, and the remedial justice of the court was expanded far beyond the aims of their predecessors.

E. During the colonial period, equity jurisprudence was administered irregularly, and after the establishment of the United States Government, various systems of administration existed.

1. In some of the states, separate courts of chancery were constituted.

2. In other states, the courts of common law were empowered to exercise equity jurisdiction.

3. In still other states, the rules and principles of equity were administered by existing courts without any express constitutional or statutory authorization.

4. In a few of the states distinct courts of equity still exist, and of course in such jurisdictions the common-law practice and the chancery practice have been kept separate.

5. In many states, however, legal and equitable remedies have been commingled in one form of action, and distinctions between actions at law and suits in equity have been abolished.

6. The modern action does not abolish the distinctions between law and equity.

7. Although the distinction between actions at law and suits in equity is abolished generally, the distinguishing features of the two classes of remedies, legal and equitable, are clearly marked and widely recognize; such recognition is essential to the administration of justice in an orderly manner and the preservation of the substantial rights of litigants, not from any necessary difference in the forms of pleadings and of actions, but the substantial difference between legal and equitable rights.

F. While the jurisprudence of the equity system seems to have been introduced into this country as a part of the unwritten law, the judicial machinery by which it is administered has been for a long time largely statutory.

1. The equity procedure in federal courts is now governed by various provisions of the Judicial Code and by the Federal Rules of Civil Procedure.

Substantive Rights

A. Even though Administrative Agencies are supposed to protect your substantive rights they just seem to ignore that area.

B. IRS Appeal Officers have a direct duty to protect a taxpayer's substantive rights. They do everything but that.

   1. They wouldn't know a substantive right if it bit them in the butt.

C. If you recall the last few pages of the October 2002 issue we just touched upon title 31 USC which is Money and Finance.

   1. As you read the next section about Substantive Law go over it closely so it sinks in.

   2. Substantive law overrides Administrative Equity unless you surrender your substantive rights by signing some agreement.

D. If you have a Black's Law Dictionary, read the preface in the 6th Edition. Exhibit A, 1 of 2.

E. Pay extra attention to Exhibit A, 2 of 2, last paragraph entitled "A final word of Caution."

   1. This is the result of the Administrative Equity System in that it lets not only the law float, but also lets the definitions shift and change as necessary to get the result they want,causing lots of Legal Fictions to be produced by a host of Administrative Agencies.

PREFACE

This new Sixth Edition starts a second century for Black's Law Dictionary—the standard authority for legal definitions since 1891.

Nearly every area of the law has undergone change and development since publication of the Fifth Edition in 1979. This period has seen particular change and expansion in such areas as tax, finance, commercial transactions, debtor-creditor relations, tort liability, employment, health care, environment, and criminal law. Congress and the states continue to legislate new rights and remedies; the courts continue to define and redefine legal terms; the states are increasingly adopting uniform or model laws and rules; and new causes of action and legal concepts continue unabated.

The vocabulary of the law has likewise continued to change and expand to keep pace. This has necessitated not only a significant expansion of new words and terms for inclusion in this Sixth Edition, but also a reexamination of all existing entries for currentness of legal usage. Indicative of this growth is that this new edition required the addition or revision of over 5,000 legal words and terms. Thousands of other changes were required to update or supplement supporting citations.

As with prior editions, considerable effort has been made in this Sixth Edition to provide more than basic definitions of legal words and terms. In those instances where traditional legal concepts and doctrines have over the years been either superseded, modified or supplemented by court decisions or legislation, such developments and changes are fully reflected. Additionally, because so many areas of law and practice are now governed by uniform or model acts and rules, such major sources of law as the Uniform Commercial Code, Restatements of the Law, Model Penal Code, and Federal Rules are fully reflected. Similarly, the growth and importance of federal laws, with their impact on matters that were traditionally state or local in nature, is evidenced with a considerable number of new entries and citations covering federal acts, agencies, departments and courts. Likewise, the ever expanding importance of financial terminology has necessitated the inclusion of numerous new tax, finance, and accounting terms.

Examples of word usages, with citations, have been added throughout to illustrate how specific terms are used or applied in various legal contexts.

PREFACE

Because of the inter-relationship of so many legal words and terms, the number of internal cross-references has been greatly increased. The number of abbreviation entries has also been substantially expanded, as has the Table of Abbreviations.

A number of changes have been made to the pronunciation guides to make this feature even more helpful. A comprehensive explanation of these guides is set forth on pages vii–xiv with a shorter pronunciation Key appearing on the inside front cover.

New and revised words and terms for this Sixth Edition were prepared by Joseph R. Nolan, Associate Justice, Massachusetts Supreme Judicial Court, and Jacqueline M. Nolan–Haley of Fordham University School of Law. The pronunciation transcription system and guides were prepared by M.J. Connolly, Associate Professor of Linguistics, Boston College. Words and terms of the United Kingdom were revised and updated by Professor Stephen C. Hicks, Suffolk University Law School. Tax and accounting terms were updated and expanded by Martina N. Alibrandi, Certified Public Accountant, Bolton, Massachusetts.

A Final Word of Caution

The language of the law is ever-changing as the courts, Congress, state legislatures, and administrative agencies continue to define, redefine and expand legal words and terms. Furthermore, many legal terms are subject to variations from state to state and again can differ under federal laws. Also, the type of legal issue, dispute, or transaction involved can affect a given definition usage. Accordingly, a legal dictionary should only be used as a "starting point" for definitions. Additional research should follow for state or federal variations, for further or later court interpretations, and for specific applications. Helpful sources for supplemental research are "Words and Phrases" and WESTLAW.

THE PUBLISHER

St. Paul, Minn.
July, 1990

Statements Concerning Substantive Law

A. "Substantive Law", is that which creates duties, rights and obligations.

B. "Substantive Law" is that part of the law which creates, defines, and regulates rights, duties, and obligations which give rise to a cause of action.

C. As a general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural or otherwise, are "substantive laws" in character, while those which merely prescribe he manner in which such rights and responsibilities may be exercised and enforced in a court are "procedural laws".

D. Substantive law is that part of law, which creates, defines and regulates rights, as opposed to "adjective or remedial law," which prescribes method of enforcing rights or obtaining redress of their invasion.

E. By the term "substantive law" is meant the positive law of duties and rights which gives rise to a cause of action, as distinguished from "adjective law," which pertains to practice and procedure, or the legal machinery by which the substantive law is made effective.

F. "Substantive law" has been defined as positive law which creates, defines and regulates rights and duties of parties and which may give rise to cause of action, as distinguished from "adjective law" which pertains to and prescribes practice and procedure or legal machinery by which substantive law is determined or made effective.

G. The "adjective law" or "procedural law" is that which provides a method of enforcing and protecting such duties, rights, and obligations as are created by "substantive laws", and as applied to criminal prosecutions, procedural law" included whatever is embraced by the terms pleading, evidence, and practice, and the "procedural law" relates to the legal rules which directs the course of proceedings to bring parties into court and the course of the court after they are brought in.

H. Where overruled decision deals with "procedural" or "adjective law", effect of overruling decision is prospective only, but where overruled

decision deals with "substantive law", effect of overruling decision is retroactive. "Adjective" or "procedural law" is a method provided by law for aiding and protecting defined legal rights, procedure. "Substantive law" creates, defines, and regulates rights, as opposed t "adjective," or procedural," or "remedial law," which prescribes method of enforcing rights or obtaining redress for their invasion. "Substantive law" relates to rights and duties giving rise to cause of action, while "procedural law" is machinery for carrying on the suit.

I. "Substantive rights," are those existing for their own sake and constituting the normal legal order of society, that is, rights of life, liberty, property and reputation, whereas "remedial rights" arise for purpose of protecting or enforcing substantive rights.

J. "Substantive rights" are those enjoyed under legal system before disturbance of normal relations, and "remedial rights" those by which one may resort to machinery of justice to secure amends for disturbances of substantive rights or prevent threatened disturbance.

K. Substantive rights may be in rem, such as right of man not to be intentionally or negligently damaged in his personal property or reputation, or there may be "substantive rights in personam," which are rights created by parties to them owing to their agreement with or their acts toward one another. Equity cannot, on ground of joint adventure, award defendant's property to plaintiff unless there has been clear breach of some substantive right of plaintiff recognized as creating juristic nexus between parties.

L. "Regulations," "substantive rules," or "legislative rules" are those which create law, usually implementary to existing law. "Interpretative rules" are statements as to what the administrative officer thinks the statute or regulation means.

Administrative Law-Judicial Review of Official Actions

Far more has been accomplished for the welfare and progress of mankind by preventing bad actions than by doing good ones. – William Lyon Mackenzie King

A. In simple terms, the Rule of Law requires that government operate within the confines of the law; and that aggrieved citizens, whose interests have been adversely affected, be entitled to approach an independent court to adjudicate whether or not a particular action taken by, or on behalf of, the state is in accordance with the law. In these instances, the courts examine a particular decision made by an official, or an official body, to determine whether it falls within the authority conferred by law on the decision-maker. In other words, the courts rule as to whether or not the decision is legally valid. In so doing, the judges do not substitute their own discretion and judgment for that of the government. They simply rule whether the government or its officials have acted within the ambit of their lawful authority. Thus, the judges do not "govern" the country and, do not "displace" the government when government decisions are challenged in the courts.

B. With the increasing dominance of the private sector in many countries, and the emphasis of government activity shifting from direct participation (through government-owned corporations) to regulation (as often as not, of privatised activities), the role of the courts is, if anything, becoming even more important. Decisions of government regulators impact directly on the private sector interests that they are regulating, and the private sector will look to the courts with greater frequency to shield it from excessive or abusive use of regulatory powers. At times the courts will be expected to go further, and actually review the legality of decisions being made in the private sector itself, applying the principles of administrative law (previously applicable only to official institutions), where these decisions impact significantly on the public interest.

C. What is "administrative law"?

1. In general terms, administrative law is the law governing the administration of government business. It governs both central and local government and public bodies in their exercise of statutory or other public powers, or when performing public duties.

2. In terms of administrative review, the basic question asked is not whether a particular decision is "right", or whether the judge, had he been the minister or the official, would have come to a different decision. The questions are: what the power or discretion which

the law has conferred on the official is? And has that power has been exceeded, or otherwise unlawfully exercised?

3. The Rule of Law in America consists of written a constitution under which the government is required to operate. However, there is inevitably a tension between politicians who are generally interested in exercising power and extending their influence, and constitutions, which must seek to contain that power in order to protect the citizen from arbitrariness. In the middle of this tug-of-war are the courts. The courts are asked to decide whether a disputed decision is in accordance with the Rule of Law. Of course, this is resented, at times very deeply, by some elected politicians. They see them selves as being elected by the people, and as having their authenticity (and power) derived from an exercise of political will. When confronted with a critical Judiciary they are inclined to ask: Who appointed you? The answer may well be the elected politicians. However, the role of the courts is not to impose the political views of the majority on minorities, but to protect minorities against the exercise of what some call "majority tyranny." The majority may, in a political system, have a right to make a decision, but that decision must be in conformity with the law.

4. The law expects public officials to exercise their administrative functions justly and fairly.

D. An administrative authority, when exercising a discretionary power should:

1. Pursue only the purposes for which the power has been conferred;
2. Be without bias and observe objectivity and impartiality, taking into account only factors relevant to the particular case;
3. Observe the principle of equality before the law by avoiding unfair discrimination;
4. Maintain a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues;
5. Take decisions within a time which is reasonable having regard to the matters at stake; and,
6. Apply any general administrative guidelines in a consistent manner while at the same time taking account of the particular circumstances of each case.

E. Procedure

1. Availability of guidelines: Any general administrative guidelines which govern the exercise of a discretionary power should either be made or communicated (in an appropriate manner and to the extent necessary) to the person concerned, at his or her request, whether before or after the taking of an act concerning the person;

2. *Right to be heard:* In respect of any administrative act of such a nature as is likely to affect adversely his or her rights, liberties or interests, the person concerned should be entitled to put forward facts and arguments and, in appropriate cases, submit evidence which should be taken into account by the administrative authority; in appropriate cases the person concerned should be informed, in due time and in an appropriate manner, of these rights;

3. *Access to information:* Upon request, the person concerned should be informed, before an administrative act is taken and by appropriate means, of all factors relevant to the taking of that act;

4. *Statement of reasons:* Where an administrative act is of such a nature as to affect adversely the rights, liberties or interests of a person, the person concerned should be informed of the reasons on which it is based either by stating the reasons in the act itself or, upon request, by communicating them separately to the person concerned within a reasonable time;

5. *Indication of remedies:* Where an administrative act is given in writing and which adversely affects the rights, liberties or interests of the person concerned, it should indicate the specific remedies available to the person as well as any time-limits which may be involved.

F. Review

1. An act taken in exercise of a discretionary power should be subject to judicial review by a court or other competent body; however this does not exclude the possibility of a preliminary review by an administrative authority empowered to decide both on legality and on the merits;

2. Where no time limits for the taking of a decision in exercise of a discretionary power have been set by law and the administrative authority does not take its decision within a reasonable time, its failure to do so should be open to review by a competent authority;

3. A court or other independent body which controls the exercise of a discretionary power should possess such powers of obtaining information as are necessary for the proper exercise of its functions.

4. In their implementation, the requirements of good and efficient administration, the legitimate interests of third parties, and major public interests should be given due weight. But, where these requirements make it necessary to modify these principles in particular cases or specific areas of public administration, every endeavor should be made to conform with these principles and to achieve the highest possible degree of fairness.

G. Reasons why a specific decision may be unlawful.

1. A decision may be rendered unlawful in a variety of situations. For example, a statute might give the judge a very wide discretion, but the question can still arise as to whether or not that discretion was exercised properly. Was it exercised in a manner, which promoted the intention and objectives of the statute that created it? Was the power exercised for the purpose for which it was conferred?

2. However wide discretion may appear to be on the face of a statute, where administrative law has developed, the courts will try to limit the use of discretionary power to properly reflect the purpose for which it was created. The right questions must have been asked; consultation, where appropriate, must have taken place; and irrelevant considerations must not have been taken into account.

3. A more contentious situation can occur when a court is asked to upset a decision because it is "irrational." The courts generally state that administrative powers must be exercised "reasonably" and few would quarrel with that. However, in practice, the courts generally refuse to interfere on the grounds of "reason", unless a particular decision is outrageous in its defiance of logic or accepted moral standards.

4. Another common challenge to an administrative decision is "procedural impropriety". This usually involves a claim that the people affected by a particular decision were not given an adequate or fair hearing. Precisely what does, and what does not, constitute a "fair hearing" will depend on the circumstances. In some cases, an unfair hearing will occur if lawyers are either not retained and or not allowed to cross-examine witnesses at a public hearing. At the other extreme, a fair hearing may comprise no more than the authority placing an advertisement notifying the public that a particular proposal is under consideration, and that any written representations that may be made, will be taken into account.

5. An administrative decision can also be questioned on the grounds of its being "fettered"; i.e. when a decision is made automatically, and without any consideration of the unique facts of the case. The courts always support--and at times enforce--a policy of equality of treatment, with like cases being treated alike. However, equality does not overrule equity, and equity demands that each case be treated on its individual merits.

6. The concept of "abuse of power" involves the courts looking beyond the ways in which a particular decision was reached, and to examine what the decision actually ought to be. This challenge to administrative law occurs only in the rarest of cases. One example involved a taxpayer who claimed that the revenue authorities had told him that, should he withdraw certain claims for tax deductions, they would not pursue another matter against him. The court decided that had there been a proper agreement to this effect (which in the circumstances there was not), it would have been an abuse of power for the revenue authorities to reopen the other matter. In addition, the concept of "proportionality" is currently being given more consideration as an integral component of an administrative decision. Common law has tended to stress remedies rather than principles, and judges have been reluctant to express basic notions of fairness as being fundamental principles of law. Instead, they opt for pragmatism. However, recent trends

signal that judges are becoming more adventurous and are prepared to look at whether a particular decision was "wholly out of proportion" to what was required, as for example, in the case of a local council that banned one member of the public from all local authority meetings because of the way he had behaved at various private gatherings.

7. Public officials are generally not compelled by the courts to give reasons for their decisions. However, the courts will sometimes decide that the relevant statute requires that reasons be given, and at times, a requirement to do so may be written into the law. This can occur, for example, where someone is given a right of appeal against a decision and so must be entitled to know the reasons behind the decision in order to support the appeal. There is also the danger that in the absence of information to the contrary, a court may conclude that there are, in fact, no good reasons for a decision, and a decision is not warranted. To challenge this conclusion, the public official must defend the decision. Thus, providing the reasons for decisions is desirable and should be encouraged. If nothing else, the mere act of writing down the facts and the reasons for a certain decision can help an official see the situation more clearly.

H. It cannot be said too often that "an ounce of prevention is worth a pound of cure". Every time an official has to make a decision, he or she must ask themselves a series of questions or else run the risk of falling afoul of the Judiciary through the process of administrative review. These questions are:

1. Have I got the power to do what I want to do? Or am I adopting a particular interpretation of my statutory powers in a way, which happens to suit me?

2. Am I exercising the power for the purpose for which it was given?

3. Am I acting for the right reasons? Have I taken into account all relevant information and excluded all irrelevant considerations?

4. If I am to give reasons for the exercise of the power, are these reasons correct and will they withstand independent and informed examination by a judge?

5. Will I hear and consider the points of view of people likely to be affected by the decision? Have I sufficiently informed them of what is being proposed so as to ensure that they have had a fair opportunity to make representations if they disagree?

6. Have I allowed sufficient time for consultations and representations?

7. Have I really made up my mind in advance or given that impression without considering the circumstances of the particular case?

8. Do I or anyone else involved in making the decision have any conflicting interest which might lead someone to suppose that there is bias involved?

9. Are there any grounds for someone to think that I might not be acting fairly? Have I led anyone to suppose that I will be acting differently from the way in which is now intended?

10. Has the decision-making power been wrongly delegated? Should I seek legal advice on this point?

11. Do I propose to act in a way which a court might regard as an abuse of power or as being generally so unreasonable that it is likely to rule against me?

12. A review of administrative law is essential to ensure that anti-corruption efforts can have an impact on the highest levels of corruption within a system of governance, and that reform efforts do not bounce off a virtual brick wall of legal ambiguity.

13. Above all, the citizen must feel that the administrative law fully supports and enforces transparency and accountability in decision-making on the part of all public officials.

I. Indicators as to the effectiveness of judicial review as an integrity tool.

1. Do courts have the jurisdiction to hear cases in which citizens claim that official decisions have been made unlawfully?

2. Is this remedy used?

3. Do citizens have confidence in the independence of the judiciary when they are hearing such cases?

4. Is there a conscious effort on the part of officials to comply with good administrative practice and make decisions fairly and justly (i.e. seeking the opinions of affected citizens before decisions are taken; affording them an opportunity to be heard; giving due weight to opinions expressed; giving reasons for decisions; staying within the bounds of the powers conferred by law etc.)?

5. Are relevant rules and procedures readily available to members of the public?

6. Are members of the public aware of their rights?

Equity Rules

A. We were very lucky when we pulled the book "The New Federal Equity Rules" out of a dumpster a number of years ago along with a lot of other books.

B. This book gives us an invaluable look into the secret world of Equity.

C. We just put a few pages from that book in here so you can increase your understanding of the Equity Process.

D. The modern rules of equity were put into full force and effect in 1912. Why?

E. As you will find when you read the following section these rules came from England to be put in place so that:

1. The 16th Amendment would be workable when adopted in 1913.

   a. That could be one of the pressures put on Secretary Knox to change those NO votes of the states to YES votes so he could ratify the 16th Amendment.

   b. Read Bill Benson's book about "The Law that Never Was," the Truth about the 16th Amendment.

   c. Read Phil Hart's book, "Constitutional Income, Do You Have Any?" Number 200 on our literature list.

2. They had to get these "Rules of Equity" passed so they would be prepared to start the complete take over of our America Republic with the passage of the 17th Amendment.

   a. The senators were supposed to protect state rights and from 1787 to 1913 this was their duty.

   b. The people of the states voted for those running for the House to protect the rights of the people on the local level.

   c. The State Legislators elected the Senators and if they failed to do and vote the will of the State Legislators, they could be withdrawn and replaced at any time.

d. These senators did not have to worry about raising a lot of money for campaign ads and lavish dinners, as they put their name in a hat to be voted upon by the legislature.

e. This made it very hard for the moneyed pullers of strings in America and England to get legislation passed that would benefit them so they could turn their millions into billions.

3. Now, as if the 16th and 17th Amendment were not enough to fulfill their desires for control of the American Government and thus Americans themselves.

a. They had to sneak through the Federal Reserve Act, December 23, 1913.

b. The Rule of Equity, 16th and 17th Amendments were designed to steal away the rights of the American Citizens and the Federal Reserve Act stole our money and put into motion the highly orchestrated March 9, 1933 bankruptcy.

F. Equity is derived from the King of England's power of doing justice at his discretion.

1. For those of you who have read "Legal Fictions" number 157 on our list and understand Equity will realize how the two go together.

a. Under Equity they can create lots of fiction.

b. They can create as much fiction as they can shove down your throat.

c. The professional wordsmiths of all the host of administrative agencies also create lots of fictions under the Equity Administrative System also.

d. All the Law schools and the entire legal system acts as though their Equity Administrative Fiction is real laws of Substantive value.

e. It is like the "king has no clothes" or to put it another way their Equity Administrative Fictions have no real force and effect of law if you are not engaged in a activity with them or work for them.

f. An interesting clue regarding these "legal fictions" can be found in Federalist Paper No.15 where Alexander Hamilton reveals "<u>we must extend the authority of the Union to the persons of the citizens, -- the only proper objects of government</u>." Note use of the terms "persons"and "objects."

g. You don't have to "de-fang" them because they have no teeth in the first place just a mean, scary, bark and lots of "fictional" paper.

G. Please read this short Equity section and use your highlighter to mark the important sections.

H. What you are learning in this issue of the "VIP Dispatch" is something they don't teach in any of the law schools that we know of.

1. We have explained this to a number of attorneys and CPA's who admit they new little if anything about the behind the scenes string pulling.

2. You have a hard time standing up against something you do not understand or playing a game when you are not sure of the rules.

I. Equity is like a small sailboat floating on the ocean it just floats all over the place if you don't know how to control the boat.

1. Administrative Equity law will take you down every time if you don't know how to control it.

THE NEW
FEDERAL EQUITY RULES

Promulgated by The United States Supreme Court
at the October Term, 1912,
as revised to July 1, 1925:

together with the cognate statutory provisions and a reproduction with annotations, of all the former Federal Equity Rules

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With an Introduction, Annotations and Forms by

JAMES LOVE HOPKINS

Of the Bar of the United States Supreme Court

Author of "Hopkins on Patents", "Hopkins on Unfair Trade", "Hopkins on Trademarks" and annotator of "Hopkins' Judicial Code"

FIFTH EDITION

THE W. H. ANDERSON COMPANY
CINCINNATI, OHIO
1925

PREFATORY NOTE

It is the purpose of this little book to conveniently present those rules for the conduct of proceedings in equity in the national courts which the United States Supreme Court has, under the direction of statute, promulgated from time to time. No amount of revision can make altogether obsolete the opinions interpreting any particular ancient rule which the revision has fallen short of abrogating altogether.

In undertaking the revision which has lately been completed, the bench for the first time in its history invoked the aid of the bar (of the nine Circuit Courts of Appeals), and the committee of the Supreme Court, composed of the Chief Justice, Mr. Justice Lurton and Mr. Justice Van Devanter, received and considered the recommendations of the committees from the various circuits, whose personnel is given in the succeeding pages. The high attainments of the gentlemen of the bar who have thus contributed to the revision, no less than the imprimatur of the Supreme Court, gives to the new rules an unusual interest to the student of equity jurisprudence; to the practitioner they are, like all revised rules, an added incident of his day's work, and their use and understanding a matter of immediate necessity.

The deliberation of this revision, the unusual number of lawyers responsible for it, and the representative character of those lawyers, leads to the reasonable hope that further revision will not be necessary or sought for in the near future.

What light the best-considered opinions on the old rules may throw upon the new, this book attempts to present compactly. Here and there are interpolated the Orders of the English High Court of Chancery on which particular rules are rooted, or which have been

taken over in their entirety; a matter of direction to the practitioner, who may pursue the study in the older English texts, and, it is hoped, a stimulus to the student, impelling him to keener interest in the history of equity practice.

The thanks of the annotator are due, and gratefully extended to Mr. Justice Lurton, through whose courtesy there is herein reproduced the invaluable letter of Lord Chancellor Loreburn upon the modern chancery practice in England; also to Mr. James D. Maher, of the clerk's office of the Supreme Court, for his many valuable suggestions, which have included the correction of errors existing in the first official printing of New Rules 26, 30, 32, 34 and 45.

JAMES LOVE HOPKINS.

Chemical Building, St. Louis.
December 1, 1912.

NOTE TO THE THIRD EDITION.

No effort has been spared to render this edition worthy of the generous reception and extensive use accorded to its predecessors. The method of giving each novel practice point ruling in the language of the court, wherever possible, has met with approval and has been followed in this revision, which embraces all reported Federal cases as of September 1, 1921.

THE AUTHOR.

Chemical Building, St. Louis, Mo.

NOTE TO THE FOURTH EDITION.

This revision has been made necessary by the accumulation of reported cases involving the Rules, since the third edition of this work. No effort has been spared which might enhance its usefulness, within its very interesting field.

THE AUTHOR.

Chemical Building, St. Louis, Mo.
December 1, 1923.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912

ORDER.

It is now here ordered by the court that the rules of practice for the courts of equity of the United States, this day adopted and established by the court, be, and the same are hereby, promulgated as such, to be in force on and after February 1, 1913.

The Chief Justice said:

"The court, in announcing the adoption of the new rules, expresses its appreciation of the interest in the subject manifested generally by the judges of the courts of the United States, and especially by the judges of the circuit courts of appeals, in appointing bar committees from their respective circuits to consider and make recommendations upon the subject. The result of the intelligent and careful labors of such committees, embodied in the reports which they made, as well as the interest shown by the entire bar, and the many individual suggestions which came to the court, greatly facilitated the performance of the duty of framing the new rules.

"The court also desires to record its appreciation of the courtesy shown by the Lord Chancellor of England in replying in writing to certain questions concerning the practical operation of English chancery rules submitted to him by Mr. Justice Lurton while he was in England for the purpose of observing such operation."[1]

November 4, 1912.

[1] See *post*, p. 27.

WHERE THESE RULES ARE TO BE FOUND IN THE REPORTS

The thirty-three rules of 1822 went into effect upon the first day of July of that year, and are reported 7 Wheat. 5, 8, 5 L. Ed. 375, 377. The equity rules promulgated in 1842 took the place of the rules of 1822, and were ninety-two in number. Peters included them in his seventeenth volume, an unofficial publication which is now quite rare, and which is a monument to the folly of not knowing when to quit; as it is not in the official set. The Act of Congress of August 26, 1842, having authorized the appointment of a reporter for the Supreme Court, Benjamin C. Howard was appointed to the position January 27, 1843, and printed the rules (1-92) in 1 How. 1. These rules are not printed as part of the first of Howard in that popular reprint of the Supreme Court reports which is cited as "L. Ed.," whose publishers, for some inscrutable reason, have placed them in the rear of the 14th of Wallace, where their citation is 20 L. Ed. 910, 920, and where the entire ninety-four rules appear, which are now displaced by the revision of 1912. The 92d rule of 1842 was superseded at the December term, 1863, by a new Rule 92 (1 Wall. vii). Rule 93 was promulgated at the October term, 1878 (97 U. S. vii), and Rule 94 at the October term, 1881 (104 U. S. ix).

THE EQUITY RULES

CHAPTER I.

INTRODUCTORY.

Sec. 1. The distinction between law and equity.

We must look for the beginning of the demarcation between law and equity in the pages of English history. The *aequitas* of the Roman Law, the justice or natural law of the Pandects, although the latter embodies the modern idea of equity, give us no practical assistance in developing the origin of equity jurisprudence. Sir Frederick Pollock has said of equity that: "It still presents, as much as ever, a distinct historical problem; one might almost say an unique one. As matter of history no one has ever ascribed the origin of English equity to either legislation or custom. It is derived from the king's ancient power of doing justice at his discretion, and by special means in cases where the ordinary means of justice failed, a power admitted from very ancient times down to the seventeenth century."[1]

"The distinction between law and equity," said Chief Justice Taney, "is recognized everywhere in the jurisprudence of the United States."[2] And Mr. Justice Baldwin said, "The separation of cases in law from those in equity, is a necessary incident of the common law."[3] So we see that our equity jurisprudence is but a part of our splendid inheritance of the common law; and the Supreme Court has gone beyond the recognition of our indebtedness to Great Britain in this regard, and has recognized the mother country as the originator of our system of equity. "It is true that

[1] First Book of Jurisprudence, p. 243.

[2] United States v. King, 7 How. 846, 12 L. Ed. 934.

[3] Livingston v. Story, 11 Peters 351, 394, 9 L. Ed. 746, 763.

the separation of common law from equity jurisdiction is peculiar to Great Britain; no other of the states of the Old World having adopted it."[4]

Sec. 2. Constitutional recognition of the distinction between law and equity.

Article III, § 2, subdivision 1, of the Constitution of the United States, provides that, "The judicial power shall extend to all cases of law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority."

Of this provision Mr. Justice Daniel said: "By the Constitution of the United States, and by the acts of Congress organizing the Federal Courts, and defining and investing the jurisdiction of these tribunals, the distinction between common law and equity jurisdiction has been explicitly declared and carefully defined and established."[5] Chief Justice Taney twice spoke about this distinction. "The distinction between law and equity is recognized everywhere in the jurisprudence of the United States, and prevails (as this court has repeatedly decided) in the State of Louisiana, as well as in other States;"[6] and again, "The Constitution of the United States, in creating and defining the judicial power of the general government, establishes this distinction between law and equity; and a party who claims a legal title must proceed at law, and may undoubtedly proceed according to the forms of practice in such cases in the State court. But if the claim is an equitable one, he must proceed according to rules which this court has prescribed (under the authority of the Act of August 23, 1842), regulating proceedings in equity in the courts of the United States."[7]

The constitutional provision has been supplemented by statute. "The forms of mesne process and the forms and modes of proceeding in suits of equity and admiralty and maritime jurisdiction in the circuit and district courts shall be according to the principles, rules

[4] Mr. Justice Johnson, in Livingston v. Moore, 7 Peters, 469, 547, 8 L. Ed. 751, 779.

[5] Fenn v. Holme, 21 How. 481, 484, 16 L. Ed. 198.

[6] United States v. King, 7 How. 833, 846, 12 L. Ed. 934.

[7] Bennett v. Butterworth, 11 How. 669, 674, 13 L. Ed. 859.

and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from time to time, to any circuit or district court, not inconsistent with the laws of the United States." Section 913, Revised Statutes of the United States.

Of this section Judge Sanborn, of the Eighth Circuit, has said: "The union of legal and equitable causes of action in one suit is prohibited by § 913, Revised Statutes (United States Comp. St., 1901, p. 683), and in removal cases, when such a union is permitted in the state courts from which they come, the causes of action must be separated into distinct actions at law and suits in equity in the national courts.[8] In the national courts legal causes of action, either on removal or in original cases, must be prosecuted in actions at law where the parties may have a trial by jury, and causes of action in equity where appeal may be made to the conscience of the chancellor.[9] And the Federal Courts may not lawfully transform by order or amendment against the objection of a defendant an original action at law into a suit in equity, or an original suit in equity into an action at law, because such a course of action would be to subject the defendant to a wholly different system of administration of rights and remedies from that to which he was liable under the original process." [10]

The foregoing extract presents what would seem the sound rule. The cases to the contrary [11] are very slightly supported by reason or authority. It is now provided by Rule 22, Rules of 1912, that

[8] Citing Hurt v. Hollingsworth, 100 U. S. 100, 103, 25 L. Ed. 569; Cherokee Nation v. Southern Kansas Ry. Co., 135 U. S. 641, 651, 34 L. Ed. 295.

[9] Citing Buzard v. Houston, 119 U. S. 347, 351, 30 L. Ed. 451; Scott v. Armstrong, 146 U. S. 499, 512, 36 L. Ed. 1059.

[10] SANBORN, J., dissenting opinion, in Schurmeier v. Connecticut Mut. Life Ins. Co., 171 Fed. Rep. 1, 16, 96 C. C. A. 107. Citing, Blalock v. Equitable Life Assur. Soc., 73 Fed. Rep. 655, 660, 661; Stevens v. Brooks, 23 Wis. 196, 199; Kavanagh v. O'Neill, 53 Wis. 101, 10 N. W. 369, 370; Carmichael v. Argard, 52 Wis. 607, 9 N. W. 470, 471; Hayward v. Hapgood, 4 Gray (Mass.), 437; Gray v. Brown, 15 How. Prac. (N. Y.), 555; Sheldon v. Adams, 18 Abbott's Prac. (N. Y.) 405.

[11] United States Bank v. Lyon County, 48 Fed. Rep. 632, 635; Schurmeier v. Connecticut Mut. Life Ins. Co., 171 Fed. Rep. 1, 16, 96 C. C. A. 107.

"if at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the court, it shall be forthwith transferred to the law side and there proceeded with, with only such alteration in the pleadings as shall be essential."

Sec. 3. Custom, practice and law.

The evolution of law from custom is clearly traceable in many channels. Law is frequently avowedly based on custom. Practice, as Sir Frederick Pollock has pointed out, is that particular kind of custom by which a court of justice regulates the course of its own proceedings.[12] Both law and procedure, therefore, may be founded on custom, and they are most conveniently distinguished from each other as "substantive" and "adjective" law.[13]

The student who seeks to found his knowledge of the law upon an historical basis, finds his labors sadly hampered by lack of data; and in no other department of legal study is this search more difficult than in chancery practice. But it seems clear that law owes much to equity; that the purely equitable remedies of one century have become the legal remedies of the next. So that we now find the King's Bench Division in England entertaining purely equitable defenses, and the chancery division adjudicating defenses purely legal.

Sec. 4. Early English chancery practice.

When Bacon, in 1618, became Lord Chancellor, he promulgated one hundred rules, of which Lord Campbell says "they are wisely consistent, and expressed with great precision and perspicuity. They are the foundation of the practice of the court of chancery, and are still cited as authority."[14] These rules of Bacon, and those of Lord Clarendon, are among those often referred to as the "ancient" rules of chancery, while those contained in the later orders, upon which our Supreme Court drew freely for our early equity rules, are styled the "more recent" rules.

That King Arthur had a chancellor; that many other chancellors lived and died before a court of chancery was called into being; that

[12] First Book of Jurisprudence, p. 12.
[13] *Ibid*, p. 78.
[14] Campbell's Lord Chancellors, p. 114.

chancery contained two courts, one ordinary (the petty-bag side) and the other extraordinary, are the skeleton outline of chancery's early history. Which division came into being first will never be known. Blackstone says the ordinary was the more ancient; Lord Campbell says they originated at the same time; while John Sidney Smith, of the Six Clerks' Office, does not commit himself. Smith says "the ordinary * * * has been a court time out of mind; the extraordinary * * * also is a court of great antiquity."[15] With this confusion as to its origin, it is evident that the early history of its practice can never be developed.

Sec. 5. The relation of English chancery practice to that of the United States.

In the rules first promulgated by the Supreme Court,[16] in February term, 1822, we find the following:

"RULE XXXIII. In all cases where the rules prescribed by this court, or by the Circuit Court, do not apply, the practice of the circuit courts shall be regulated by the practice of the High Court of Chancery in England."

Subsequently we find in the equity rules as revised in 1866 the following:

"RULE 90. In all cases where the rules prescribed by this court or by the Circuit Court do not apply, the practice of the Circuit Court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice."

Thus, we see that the Supreme Court, by Rule 33, of 1822, contemplated the adoption, in all cases where the equity rules established by the Supreme Court, or by the Circuit Court, did not apply, of the current practice of the High Court of Chancery in England; while the later Rule 90 specifically relates to what, at the time of

[15] Smith's Chancery Practice, 1st Amer. Ed., p. 2.

[16] See the following Acts as statutory authority for the adoption of rules, or specific provisions as to procedure: Act of September 29, 1789, Chap. 21, 1 Stat. L. 93; Act of May 8, 1792, Chap. 36, 1 Stat. L. 276; Act of May 19, 1828, Chap. 68, 4 Stat. L. 278; Act of Aug. 1, 1842, Chap. 109, 5 Stat. L. 499.

the adoption of the rule, was the practice of the English court.[17] The later provision was wisely adopted because of the great uncertainty to which the procedure in the English court had been subjected by constant agitation for reform in procedure; and this agitation continued until it resulted in the enactment of August 5, 1873, entitled the "Supreme Court of Judicature Act," which provided for the consolidation of the Court of Chancery with the various law courts, so constituting one Supreme Court of Judicature.

As to the best sources of authority as to what the adopted English practice was, the Supreme Court thus directs us:

"Reference is made to the first edition of Daniell (published, 1837), as being, with the second edition of Smith's Practice (published the same year), the most authoritative work on English chancery practice in use in March, 1842, when our equity rules were adopted. Supplemented by the General Orders made by Lords Cottenham and Langdale in August, 1841 (many of which were closely copied in our own rules), they exhibit that 'present practice of the High Court of Chancery in England,' which, by our 90th rule was adopted as the standard of equity practice in cases where the rules prescribed by this court, or by the Circuit Court, do not apply. The second edition of Mr. Daniell's work, published by Mr. Headlam in 1846, was much modified by the extensive changes introduced by the English Orders of May 8, 1845; and the third edition, by the still more radical changes introduced by the Orders of April, 1850, the statute of 15th and 16th Vict., chap. 86, and the General Orders afterwards made under the authority of that statute. Of course, the subsequent editions of Daniell are still further removed from the standard adopted by this court in 1842, but as they contain a view of the later decisions bearing upon so much of the old system as remains, they have, on that account, a value of their own, provided one is not misled by the new portions."[18]

[17] The English chancery practice, as it existed in 1842, has been held to regulate our practice, except where provided for and controlled by statute, or the rules of the Supreme Court. Pennsylvania v. Bridge Co., 13 How. 518, 563, 14 L. Ed. 249; Griswold v. Bragg, 48 Fed. Rep. 519.

[18] MR. JUSTICE BRADLEY, in Thomson v. Wooster, 114 U. S. 104, 29 L. Ed. 107.

Sec. 6. The evolution of the practice of the High Court of Chancery of England.

It is fortunate that our courts have seldom had to go beyond their own rules and resort to the practice in the English court, because of the enormous difficulty of ascertaining what the practice of the English court was at any particular time. The High Court of Chancery was constantly criticized, lampooned and ridiculed because of the complexity and delays in its procedure. Charles Dickens in "Bleak House" exploited the fictitious case of Jarndyce versus Jarndyce with his matchless skill. As early as 1841 we read in the work of one of the ablest English text writers the following:

"A person ignorant of the facts, hearing the loud complaints which are constantly made of the court, and the calls which are repeatedly reiterated, both in and out of Parliament, for a reform of its abuses, would naturally imagine that the spirit of reform, which, for some years past, has pervaded nearly all the other institutions of the country, had never been led to visit the Court of Chancery, and that while attempts have been made to put to the rout the abuses, real or imaginary, of every other department of the public service, those of the Court of Chancery alone had been suffered to slumber on, in undisturbed tranquillity. Great, therefore, would be the surprise of such a person to find that so far from this being the case, there is no institution or department which, within the last thirteen or fourteen years, has undergone more alterations and modifications, in the way of reform, than this court." [19]

The same writer points out that during the period from the commencement of the year 1828 to 1841 the following Orders of the High Court of Chancery were issued:

3 April, 1828.	New Orders.....	81	By Lord Lyndhurst.
23 November, 1831.	Amended Orders..	9	By Lord Brougham.
26 November, 1833.	New Orders.....	36	By Lord Brougham.
21 December, 1833.	.....	1	By Lord Brougham.
30 February, 1837.	.....	1	By Lord Cottenham.
5 May, 1837.	.....	16	By Lord Cottenham.
9 May, 1839.	.....	6	By Lord Cottenham.
9 May, 1839.	.....	6	By Lord Cottenham.
	Total	156	

[19] Daniell, New Orders of the Court of Chancery, p. XIII.

During that period twenty rules were prescribed by Sir Edward Sugden's Act, 1 W. 4, c. 36, s. 5; seven acts of Parliament were enacted which affected the process, practice or officers of the court as follows:

1st and 2d W. 4, c. 36; 2d and 3d W. 4, c. 33; Ibid., c. 111; 3d and 4th W. 4, c. 84; Ibid., c. 94; 4th and 5th W. 4, c. 82; 5th and 6th W. 4, c. 47.

And on the 26th day of August, 1841, fifty-one New Orders in Chancery were issued. This tabulation gives some idea of the persistency with which the practice of that court was complicated by reform, and forms a record which ought to be instructive on this side of the Atlantic.

The Rules of 1912 do not, like our earlier rules, refer us to the English practice. Indeed, that practice has been so completely altered during the past half century that it was thought to no longer furnish a practical basis for regulating our practice.

Sec. 7. The constitutional origin of Federal courts of equity.

The Supreme Court was created by the constitution itself (Art. III, § 1), in the words, "The judicial power of the United States shall be vested in one Supreme Court," the courts of inferior jurisdiction being provided for as "such inferior courts as the Congress may from time to time ordain and establish;" and as to the lower courts, the power to create them was expressly conferred upon Congress by Art. I, § 8, "to constitute tribunals inferior to the Supreme Court." With the exceptions of those cases in which original jurisdiction is conferred upon the Supreme Court by § 233, the Judicial Code,[20] the original jurisdiction of equity causes is vested in the district courts (§ 24, the Judicial Code).[21]

[20] See Hopkins' Judicial Code, p. 201; "Sec. 233. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice consul is a party."

[21] See Hopkins' Judicial Code, p. 31.

Sec. 8. The statutory authority for the Equity Rules.

The power is expressly conferred upon the Supreme Court to promulgate rules for equity practice.[22]

Section 913, Revised Statutes of the United States. "The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the circuit and district courts shall be according to the principles, rules and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from time to time, to any circuit or district court, not inconsistent with the laws of the United States."

Section 917, Revised Statutes of the United States. "The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the circuit and district courts."

The equity rules promulgated by the Supreme Court under the authority of these sections, when not in conflict with statutes of the United States, have the force and effect of law.[23]

Chief Justice Marshall, at an early day, upheld the delegation of power to the courts to make rules in regulation of their practice against the objection that it was an unconstitutional delegation of legislative power.[24]

[22] That the circuit courts of appeals have no power to prescribe rules for the district courts, see The Philadelphian, 60 Fed. Rep. 423, 9 C. C. A. 54.

[23] American Graphophone Co. v. National Phonograph Co., 127 Fed. Rep. 349, 350; Stevens v. Missouri, K. & T. Ry. Co., 104 Fed. Rep. 934, 936.

[24] Wayman v. Southard, 10 Wheat. 1, 6 L. Ed. 253.

Sec. 9. Rules of court, generally.

Rules of court may be defined to be the standing regulations of its practice which have been adopted by the court itself, or prescribed for it by a higher judicial or legislative authority. They may not be written; indeed, there is much unwritten practice known to every court. "It is not necessary," said Mr. Justice Blatchford, when district judge, "that a practice of a court to be recognized or sustained, should be embodied in a written rule. Written rules are undoubtedly preferable, but a practice in respect to a particular matter in a court may be established without the existence of a positive written rule."[25] And Mr. Justice McLean said: "It is not essential that any court in etablishing or changing its practice should do so by the adoption of written rules. Its practice may be established by a uniform mode of proceeding for a series of years, and this forms the law of the court."[26]

It would be curious to examine the number of instances in which the equity rules have been deliberately disregarded by the courts for whose guidance they were promulgated. The unwritten practice is superior to the equity rules in many cases. For example, no lawyer could comply with the requirements of former Rules 18 or 63 unless there was, in the office of the clerk of the circuit court, an order book, in which the order taking the bill *pro confesso,* or the entry setting down exceptions for hearing, could be properly written. Yet in the Eastern Division of the Eastern District of Missouri the office of the clerk never contained an order book, and unwritten practice, over-riding the equity rules,[27] required the filing of a document in the case with the desired entry. This, to be sure, was no very serious matter, but it forms one of the innumerable instances of irregularity in practice which make it difficult to practice with certainty in the various circuits, their districts and divisions. The "order book" is now peremptorily required by Rule 3, Rules of 1912.

Such deviations from the practice ordained by the equity rules as that just referred to are wrong. "A rule established by the

[25] United States v. Stevenson, 1 Abb. U. S. 495, Fed. Case 16,395.

[26] Duncan's Heirs v. United States, 7 Peters, 435, 451, 8 L. Ed. 739, 745.

[27] It appears that the Western District of Tennessee had an order book, in which no entry was made for more than seven years. Electrolibration Co. v. Jackson, 52 Fed. Rep. 773, 774.

Supreme Court of the United States in pursuance of law," Judge Drummond said, "becomes, to all intents and purposes, of the same effect as the law itself."[28] The primary object of all rules is to secure uniformity in practice. They relate to the adjective, not to the substantive, law. "The rules established or altered by the Supreme Court, under legislative authority, are not rules of decision, but are merely rules of practice."[29]

Every lawyer wishes to comply with the rules of court. The difficulty of learning what the rules, written and unwritten, are, consumes much valuable time which were better devoted to the merits of the controversies in the courts. Periodical upheavals of the rules seem inevitable. Compliance with rules must be based upon a knowledge of the rules. When the rule is clear and courts deliberately depart from it, the result is an unfair embarrassment of the bar. "The equity practice of the courts of the United States," said Mr. Justice Curtis, "is governed by the rules prescribed by this court under the authority conferred upon it by the act of Congress and is the same in all the States."[30] "No practice of the Circuit Court, inconsistent with those rules," said Mr. Justice Story, "can be admissible to control them."[31] "No district court," said the late Judge Thayer, "has power to disregard their provisions."[32] Yet, as illustrating the apathy of some judges in dealing with the equity rules, we might cite Judge Hammond, "except in a general way, very little attention has been paid to them, and I doubt if any case can be found in any of the courts where they have been scrupulously and exactly enforced, or where they have been even nearly followed. Besides, we mix our State and Federal practice almost indistinguishably and quite unconsciously."[33] While Judge Hammond is undoubtedly right to the extent that there is much laxity in practice, for which the responsibility rests partly with the bench and largely

[28] Seymour v. Phillips & Colby Const. Co., 7 Biss. 460, Fed. Case 12,689; to the same effect, see American Graphophone Co. v. National Phonograph Co., 127 Fed. Rep. 349; United States v. Barber Lumber Co., 169 Fed. Rep. 184.

[29] The Selt, 3 Biss. 344, Fed. Case 12-649.

[30] Betts v. Lewis, 19 How. 72, 15 L. Ed. 576.

[31] Bank of the United States v. White, 8 Peters, 262, 269, 8 L. Ed. 938, 941.

[32] Northwestern Mut. Life Ins. Co. v. Keith, 77 Fed. Rep. 374, 23 C. C. A. 196; followed in United States v. Barber Lumber Co., 169 Fed. Rep. 184.

[33] Electrolibration Co. v. Jackson, 52 Fed. Rep. 773.

with the bar, his language must not be interpreted as an approval of such laxity. Even the United States as a party is bound by these rules and held to compliance with them.[34]

Sec. 10. Judicial notice of rules.

The rule as to judicial notice does not extend to rules. While a Federal Court takes judicial notice of the laws of the State affecting its procedure, it does not take such notice of the rules of the State courts, and, if relied upon, such rules must be proven.[35]

In so holding the Federal Courts are in harmony with the State courts.[36]

The English rule is the same: "Anything required to be done by the law of the land must be noticed by another court; but a court of error cannot notice the practice of another court."[37]

Sec. 11. Construction of rules.

Rules are grouped, according to their character, into two classifications, mandatory and directory. When directory, a party guilty of breach of the rules may always, in the discretion of the court, be relieved from the consequences of his breach;[38] while mandatory rules must be complied with strictly.[39]

Sec. 12. Rules of the District Courts and Circuit Courts of Appeals.

The District Courts and Circuit Courts of Appeals are authorized by statute to make rules, within a prescribed range.

Section 918, Revised Statutes of the United States. "The several circuit and district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under the preceding

[34] United States v. Barber Lumber Co., 169 Fed. Rep. 184.

[35] Randall v. New England Order of Protection, 118 Fed. Rep. 782, 784; Yarnell v. Felton, 104 Fed. Rep. 161, 162; Packet Co. v. Sickles, 19 Wall. 611, 22 L. Ed. 203.

[36] Crotty v. Wyatt, 3 Brad. (Ill. App.) 388, 399; Rout v. Ninde, 111 Ind. 597; Dunn v. Bozarth, 59 Neb. 244, 80 N. W. Rep. 811.

[37] Holroyd, J., in Sandon v. Proctor, 7 B. & C. 800.

[38] Florida v. Charlotte Harbor Phosphate Co., 70 Fed. Rep. 883, 886; Burget v. Robinson, 123 Fed. Rep. 262, 59 C. C. A. 260.

[39] Adams v. Shirk, 105 Fed. Rep. 659, 660, 44 C. C. A. 653.

section, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings'' (4 Fed. Stat. Ann., p. 585).

Section 122, the Judicial Code (Hopkins' Judicial Code, p. 140): ''Each of said Circuit Courts of Appeals * * * shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law.''

The character and effect of rules of the District Courts promulgated by the authority of this section are illustrated in many cases.[40] So rules as to service need not conform to State laws.[41]

The Act of July 20, 1892, c. 209, 27 Stat. at L. 252, United States Comp. St., 1901, p. 706, relating to suing *in forma pauperis*, being confined in its terms to courts of original jurisdiction, the Circuit Courts of Appeals have no authority to promulgate like rules.[42]

Sec. 13. Effect of State legislation upon the assertion of equitable rights in the Federal courts.

In this work we have eliminated from consideration the conformity of practice on the law side of the national courts to the practice of the State in which the court is sitting, for the dual reason that this book is confined in its scope to equity procedure, and that this adaptability of the law side to local State practice does not extend in any extent to the equity side.

The inflexible adherence of the Federal courts sitting in chancery to the uniform Federal equity practice might be illustrated at length, with profit to the reader. Let a few examples suffice:

A citizen of Virginia can maintain in the Federal courts of Missouri a demand against an executor or administrator which he could not assert were he a citizen of Missouri, and could not invoke

[40] Steam Stone Cutter Co. v. Jones, 13 Fed. Rep. 580; Mahr v. Union Pacific R. Co., 140 Fed. Rep. 921, 925; Southern Pacific Co. v. Denton, 146 U. S. 202, 36 L. Ed. 942; Lincoln v. Power, 151 U. S. 436, 38 L. Ed. 224; Shepard v. Adams, 168 U. S. 618, 42 L. Ed. 602.

[41] Shepard v. Adams, 168 U. S. 618, 42 L. Ed. 602.

[42] *In re* Bradford's Petition, 139 Fed. Rep. 518, 71 C. C. A. 334.

Federal jurisdiction.[43] A State statute permitting a married woman to sue in her own name does not govern the Federal Court of Equity, her bill is demurrable, and she must proceed by next friend, appointed under former Rule 27.[44] Where a Kansas statute permitted parties to file an agreed statement of facts, and a stipulation that the court take jurisdiction and render decree, without pleadings, Judge McCrary refused to entertain such an application.[45] So where a State statute gives to the owner of mere equitable title to real estate, the right to proceed in ejectment, the holder of such a title cannot proceed on the law side of the Federal Court, but must have recourse to the chancery side; "in the courts of the United States a recovery in ejectment can be had alone upon the strict legal title."[46]

But when we leave the matter of procedure and come to the enforcement of substantive equitable rights, we find that "new classes of cases may by (State) legislative action be directed to be tried in chancery, but they must, when tested by the general principles of equity, be of an equitable character, or based on some recognized ground of equity interposition."[47]

A State law cannot create jurisdiction for a Federal Court; but "a State law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper Federal tribunal, whether it be a court of equity, of admiralty, or of common law. The statute in such cases does not confer the jurisdiction. That exists already, and it is invoked to give effect to the right by applying the appropriate remedy."[48]

In the case last quoted from, a writ of prohibition to a District Court was denied, upon the ground that a liability created by a pilotage law might be enforced in the local Federal Court sitting in admiralty. In an earlier case originating in Kentucky, the Supreme Court held that a Federal Court sitting in Kentucky should, on its

[43] Payne v. Hook, 7 Wall. 425, 19 L. Ed. 260.

[44] Wills v. Pauly, 51 Fed. Rep. 257.

[45] Nickerson v. Atchison, T. & S. F. R. Co., 30 Fed. Rep. 85.

[46] Mr. Justice Miller, in Langdon v. Sherwood, 124 U. S. 74, 31 L. Ed. 344.

[47] Mr. Chief Justice Fuller, in Cates v. Allen, 149 U. S. 451, 458, 37 L. Ed. 804, 808.

[48] Mr. Justice Swayne, in *Ex parte* McNiel, 13 Wall. 236, 243, 20 L. Ed. 624, 626.

equity side, entertain a bill to remove a cloud on title, by recognizing "a new equity" created by the Kentucky Legislature, having its origin in peculiar local conditions.[49] Later, a suit to quiet title, based upon a Nebraska statute, was entertained in a Federal Court sitting in equity.[50] But the latter case goes only to the extent of entertaining jurisdiction "if the controversy is one in which a court of equity alone can afford the relief prayed for."[51] Furthermore, the new remedy prescribed by State legislation must be "substantially consistent with the ordinary modes of proceeding in equity" or the Federal Court will not enforce it on the equity side.[52] So, where a statute of Mississippi gave to a simple contract creditor, who had not reduced his claim to judgment, or resorted to any legal proceedings upon his contract, the right to maintain an action to set aside alleged fraudulent conveyances of property by his alleged debtor, as obstacles to the recovery of his contract demand, the remedy was abhorrent to the old equity rule (that equity will only aid the enforcement of a remedy at law where the debt is acknowledged or reduced to judgment) and the Federal courts declined to enforce it.[53]

Whatever the effect of State legislation on enlarging the remedies in equity in the Federal courts, it is obvious that in no event can the States "restrict or diminish the power or jurisdiction of Federal courts of equity, because only an act of Congress can do that."[54] So a law of a State may by statute forbid the bringing of suits to enjoin the collection of taxes, but the law will not affect the jurisdiction of the Federal courts sitting in the State.[55]

[49] Clark v. Smith, 13 Peters, 195, 10 L. Ed. 123.

[50] Holland v. Challen, 110 U. S. 15, 28 L. Ed. 52.

[51] Frost v. Spitley, 121 U. S. 552, 557, 30 L. Ed. 1010, 1012; Whitehead v. Shattuck, 138 U. S. 146, 34 L. Ed. 873.

[52] Whitehead v. Shattuck, 138 U. S. 146, 34 L. Ed. 873.

[53] Cates v. Allen, 149 U. S. 451, 37 L. Ed. 804.

[54] TAFT, J., in Taylor v. Louisville & N. R. Co., 88 Fed. Rep. 350, 357, 31 C. C. A. 537.

[55] Taylor v. Louisville & N. R. Co., 88 Fed. Rep. 350, 357, 31 C. C. A. 537.

Administrative Agencies

A. Administrative agencies in the discharge of their duties are necessarily called upon to construe and apply the provisions of the law under which they function.

   1. This necessity for, and power of, construction and interpretation does not change the character of a ministerial duty, or involve an unlawful use of legislative or judicial power.

B. An administrative agency has power to interpret its own rules, which have the force and effect of law.

C. A court is not bound by a stipulation that the legal questions involved in a case have uniformly been settled in a certain way by administrative practice, since such a stipulation involves conclusions of law both in respect to the legal issues in the case and those resolved by such practice.

   1. Administrative interpretations are appropriate aids toward eliminating confusion and uncertainty in doubtful cases.

   2. Where the statute being administered uses ambiguous terms or is of doubtful construction, a clarifying regulation or one indicating the method of the statute's application to specific cases is permissible, and in many cases it has been held that a particular portion of a statute being administered was not so clear and free from ambiguity as to preclude construction by regulation.

   3. In order to justify construction by either an administrative agency or court, it must first appear that construction is necessary.

   4. Inconvenience or hardships, if any, that result form following the statute as written, must be relieved by legislation, and construction may not be substituted for legislation.

   5. Where the language of a statutes is plain and unambiguous, there is no occasion resort to interpretative regulations.

   6. An unambiguous statute may not be supplemented or altered in the guise of interpretation.

   7. These principles are particularly applicable when administrative interpretation is offered as a guide to the courts in construction of a statute.

D. The power of an administrative agency to construe and interpret the law is applied in several different ways.

1. First and foremost is the issuance of rules and regulations, and there is recognized a distinct class known as "interpretative" regulations, the enactment of which is regarded as a function judicial rather than legislative in character.

2. An administrative agency may also render interpretations of the law in the course of exercise of its adjudicating powers or may, even without statutory authorization to do so, specifically issue interpretations, rulings, or opinions upon the law it administers.

E. Construction and interpretation by an administrative agency of the law under which it acts provides a practical guide as to how the agency will seek to apply the law, and an experienced and informed judgment to which courts and litigants may properly resort for guidance.

1. Such construction extends beyond meeting the necessities of administration and is given effect by the courts when they are called upon to determine the true construction and interpretations of such laws.

2. He who chooses to rely upon an interpretation regulation does so at his won peril and stands the risk of its not being followed by the courts.

3. The fact that an interpretation has been made by regulation or otherwise does not preclude a subsequent different, but correct, interpretation by the agency.

4. An agency's interpretation of its own rule becomes part of the rule.

F. We show you some of the Federal Administrative Agencies that will try anything they can to get money out of your back pocket.

1. Included are six pages of them.

2. All have their own little world they live and work in.

3. Another thing they want to do is to try to adopt you into their Administrative Tribe so their chiefs can control and rule over you.

G. The six pages are just the Feds and as you can see it leaves out all the state, counties, and city agencies who also want you to be their subject to rule over and control.

H. As you get more deeply involved with these administrative agencies you will many times feel like you poked a hornets nest and all of a sudden they turn on you when they think you may have violated one of their many regulations.

NEWSPAPER & CURRENT PERIODICAL READING ROOM

Official US Executive Branch Web Sites

A LIBRARY OF CONGRESS INTERNET RESOURCE PAGE

This page contains Executive Branch sites only. With the time we have available, it is not possible to keep it totally comprehensive. Agencies are often included because they requested to be listed. For more government sites, see also: Legislative and Judicial (or Government Resources in general).

EXECUTIVE BRANCH

Executive Office of the President (EOP)

- White House
- Office of Homeland Security
- Office of Management and Budget (OMB)
- United States Trade Representative (USTR)

Executive Agencies

Department of Agriculture (USDA)

- Agricultural Research Service
- Animal & Plant Health Inspection Service
- Cooperative State Research, Education, and Extension Service
- Economic Research Service
- Farm Service Agency
- Forest Service
- National Agricultural Library
- Natural Resources Conservation Service
- Research, Economics & Education
- Rural Development

Department of Commerce (DOC)

- Bureau of the Census
- Bureau of Economic Analysis (BEA)
  - STAT-USA Database (password may be required)
- Bureau of Export Administration
- FEDWorld
- International Trade Administration (ITA)
- National Institute of Standards & Technology (NIST)
- National Marine Fisheries Service (NMFS)
- National Oceanic & Atmospheric Administration (NOAA)
- National Ocean Service

- National Technical Information Service (NTIS)
- National Telecommunications & Information Administration
- National Weather Service
- Patent and Trademark Office Database

Department of Defense (DOD)

- American Forces Press Service
- Air Force (USAF)
  - Air Force Research Laboratory (AFRL)
- Army (USA)
  - Army Field Manuals (full text)
  - Training and Doctrine Command (TRADOC)
- BosniaLINK
  - TALON (newspaper serving the soldiers of Task Force Eagle, and to the Implementation Force (IFOR) fact sheets)
- DIOR Reports (full text) including "Top 100 Contractors," "100 Contractors Receiving the Largest Dollar Volume..."
- Defense Contract and Audit Agency (DCAA)
- Defense Finance and Accounting Service (DFAS)
- Defense Information Systems Agency (DISA)
- Defense Intelligence Agency (DIA)
- Defense Logistics Agency (DLA)
- Defense Technical Information Center (DTIC)
  - DTIC Web Links
- DefenseLINK Locator (GILS)
- Joint Chiefs of Staff (JCS)
- Marine Corps (USMC)
- National Guard
- National Imagery and Mapping Agency (NIMA)
- National Security Agency (NSA)
- Navy (USN)
  - DON CIO (Naval Information Systems Management)

Department of Education

- Educational Resources Information Center (ERIC) and Other Clearinghouses
- National Library of Education (NLE)
- Other Federal Government Internet Educational Resources

Department of Energy

- Environment, Safety and Health (ES&H) Technical Information Services (TIS)
- Federal Energy Regulatory Commission
- Los Alamos National Laboratory
- Office of Economic Impact and Diversity
- Office of Science
- Southwestern Power Administration

Department of Health and Human Services (HHS)

- Administration for Children and Families
- Agency for Healthcare Research and Quality (AHCRQ)
- Centers for Disease Control and Prevention (CDC)
- Food and Drug Administration (FDA)
- Health Care Financing Administration
- National Institutes of Health (NIH)
    - National Library of Medicine (NLM)

Department of Housing and Urban Development (HUD)

- Government National Mortgage Association (Ginnie Mae)
- Housing and Urban Development Reading Room
- Office of Healthy Homes and Lead Hazard Control
- Public and Indian Housing Agencies

Department of the Interior (DOI)

- Bureau of Land Management (BLM)
- Bureau of Reclamation
- Fish and Wildlife Service
- Geological Survey
- Minerals Management Service
- National Park Service
- Office of Surface Mining

Department of Justice (DOJ)

- Drug Enforcement Agency (DEA)
- Federal Bureau of Investigation (FBI)
- Federal Bureau of Prisons
- Immigration and Naturalization Service (INS)
- Office of Justice Programs (OJP)
- United States Marshals Service (USMS)

Department of Labor (DOL)

- Bureau of Labor Statistics (BLS)
- Mine Safety and Health Administration
- Occupational Safety & Health Administration (OSHA)

Department of State (DOS)

- Department of State Library

Department of Transportation (DOT)

- Bureau of Transportation Statistics
- Coast Guard
- Federal Aviation Administration (FAA)
- National Transportation Library (a digital library)

Department of the Treasury

- Bureau of Alcohol, Tobacco & Firearms (ATF)
- Bureau of Engraving and Printing
- Bureau of Public Debt
- Executive Office for Asset Forfeiture
- Federal Law Enforcement Training Center
- Financial Crimes Enforcement Network
- Financial Management Service (FMS)
- Internal Revenue Service (IRS)
- Office of Thrift Supervision (OTS)
- Secret Service
- US Customs Service
- U.S. Mint

Department of Veterans Affairs

INDEPENDENT AGENCIES

- Advisory Council on Historic Preservation (ACHP)
- American Battle Monuments Commission
- Central Intelligence Agency (CIA)
- Commodity Futures Trading Commission (CFTC)
- Consumer Product Safety Commission (CPSC)
- Corporation for National Service
- Environmental Protection Agency (EPA)
- Equal Employment Opportunity Commission (EEOC)
- Farm Credit Administration (FCA)
- Federal Communications Commission (FCC)
- Federal Deposit Insurance Corporation (FDIC)
- Federal Election Commission (FEC)
- Federal Emergency Management Agency (FEMA)
- Federal Energy Regulatory Commission (FERC)
- Federal Labor Relations Authority (FLRA)
- Federal Maritime Commission
- Federal Reserve System:
  - Board of Governors of the Federal Reserve System
  - Federal Reserve Banks (via Minneapolis)
- Federal Retirement Thrift Investment Board (FRTIB)
- Federal Trade Commission (FTC)

- General Services Administration (GSA)
  - Federal Consumer Information Center (Pueblo, CO)
- Institute of Museum and Library Services (IMLS)
- International Broadcasting Bureau (IBB)
- International Joint Commission, Canada and the United States.
- Merit Systems Protection Board (MSPB)
- National Aeronautics and Space Administration (NASA)
- National Archives and Records Administration (NARA)
- National Capital Planning Commission (NCPC)
- National Commission on Libraries and Information Science (NCLIS)
- National Council on Disability
- National Credit Union Administration (NCUA)
- National Endowment for the Arts (NEA)
- National Endowment for the Humanities (NEH)
- National Indian Gaming Commission (NIGC)
- National Mediation Board (NMB)
- National Railroad Passenger Corporation (AMTRAK)
- National Science Foundation (NSF)
- National Transportation Safety Board (NTSB)
- Nuclear Regulatory Commission (NRC)
- US Nuclear Waste Technical Review Board (NWTRB)
- Occupational Safety and Health Administration (OSHA)
- Office of Federal Housing Enterprise Oversight (OFHEO)
- Office of Personnel Management (OPM)
- Office of Special Counsel (OSC)
- Overseas Private Investment Corporation (OPIC)
- Peace Corps
- Pension Benefit Guaranty Corporation
- Postal Rate Commission
- Railroad Retirement Board (RRB)
- Securities and Exchange Commission (SEC)
- Selective Service System (SSS)
- Small Business Administration (SBA)
- Social Security Administration (SSA)
- Tennessee Valley Authority (TVA)
- Thrift Savings Plan (TSP)
- United States Agency for International Development (USAID)
- United States Arms Control and Disarmament Agency (ACDA)
- United States International Trade Commission (USITC)
  - Dataweb (Import/export data)
- United States Office of Government Ethics (OGE).
- United States Postal Service (USPS)
- United States Trade and Development Agency
- Voice of America (VOA)

BOARDS, COMMISSIONS, AND COMMITTEES

- Advisory Committee on Human Radiation Experiments
- Broadcasting Bureau of Governors
- Federal Laboratory Consortium for Technology Transfer (FLC)
- Task Force on Agricultural Air Quality Research
- White House Commission on Aviation Safety and Security (Report)

QUASI-OFFICIAL AGENCIES

- Radio & TV Marti
- Radio Free Asia
- Radio Free Europe/Radio Liberty
- Smithsonian Institution (SI)

Go to:

Judicial Branch
Legislative Branch
Newspaper & Current Periodical Room Home Page
Library of Congress Home Page

Library of Congress
Comments: Ask a Librarian (September 18, 2002)

Administrative Interpretation

A. Administrative agencies in the discharge of their duties are necessarily called upon to construe and apply the provisions of the law under which they function.

   1. This necessity for, and power of, construction and interpretation does not change the character of a ministerial duty, or involve an unlawful use of legislative or judicial power.

B. An administrative agency has power to interpret its own rules, which have the force and effect of law.

C. Administrative interpretations are appropriate aids toward eliminating confusion and uncertainty in doubtful cases.

   1. Where the statute being administered uses ambiguous terms or is of doubtful construction, a clarifying regulation or one indicating the method of its application to specific cases is permissible, and in many cases it has been held that a particular portion of a statute being administered was not so clear and free from ambiguity as to preclude construction by regulation.

   2. In order to justify construction by either an administrative agency or court, it must first appear that construction necessary.

      a. Inconvenience or hardships, if any, that result from following the statute as written, must be relieved by legislation, and construction may not be substitute for legislation.

      b. Where the language of a statute is plain and unambiguous, there is no occasion to resort to interpretative regulations.

      c. An unambiguous statute may not be supplemented or altered in the guise of interpretation.

      d. There principle are particularly applicable when administrative interpretation is offered as a guide to the courts in construction of a statute.

D. The power of an administrative agency to construe and interpret the law is applied in several different ways.

1. First and foremost is the issuance of rules and regulations, and there is recognized a distinct class known as "interpretative" regulations, the enactment of which is regarded as a function judicial rather than legislative in character.

2. An administrative agency may also render interpretations of the law in the course of exercise of its adjudication powers or may, even without statutory authorization to do so, specifically issue interpretations, rulings, or opinions upon the law it administers.

E. Construction and interpretation by an administrative agency of the law under which it acts provides a practical guide as to how the agency will seek to apply the law, and an experienced and informed judgment to which courts and litigants may properly resort for guidance.

1. Such construction extends beyond meeting the necessities of administration and is given effect by the courts when they are called upon to determine the true construction and interpretation of such laws.

2. One who chooses to rely upon an interpretative regulation does so at his own peril and stands the risk of its not being followed by the courts.

3. The fact that an interpretation has been made by regulation or otherwise does not preclude a subsequent different, but correct, interpretation by the agency.

F. A construction of a statute by those administering it, even though long continued, is not binding on them or their successors if thereafter they become satisfied that a different construction should be given.

Federal Rules of Civil Procedure

A. Before the people of America could realize what was being done to their legal system, the "Powers that BE" transformed the Rules of Equity into the newly developed Federal Civil Procedure.

B. Go to the Arrows on page 86 and you can see for yourself how these Rules of Equity were transformed in the Federal Rules of Civil Procedure.

C. Who was behind the deception?

1. Brandies
2. Frankfurter
3. Carodozo
4. Pound
5. With their like-minded New Dealer Coharts

D. What we wind up with is basically a cup of Roman Civil Law, a cup of Jewish Kabalistic Law, with just enough common law to lead astray most who seek to uncover this stealing our legal system out from under us.

E. What good is it to know all this you may ask?

1. Knowing how it works will help you now start taking it apart, turning it around and using it to your benefit.

2. We have learned many lessons about how the legal system really operates. Some of us have been down a number of paths that are dead ends. We hope to keep you from taking any of these paths in your endevours.

- TITLE 28--APPENDIX
  - FEDERAL RULES OF CIVIL PROCEDURE

(As amended to January 2, 2001)

HISTORICAL NOTE

The original Rules of Civil Procedure for the District Courts were adopted by order of the Supreme Court on Dec. 20, 1937, transmitted to Congress by the Attorney General on Jan. 3, 1938, and became effective on Sept. 16, 1938.

The Rules have been amended Dec. 28, 1939, eff. Apr. 3, 1941; Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 1951, eff. Aug. 1, 1951; Apr. 17, 1961, eff. July 19, 1961; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 30, 1970, eff. July 1, 1970; Mar. 1, 1971, eff. July 1, 1971; Nov. 20, 1972, and Dec. 18, 1972, eff. July 1, 1975; Apr. 29, 1980, eff. Aug. 1, 1980; Oct. 21, 1980, Pub. L. 96-481, title II, § 205(a), (b), 94 Stat. 2330; Jan. 12, 1983, Pub. L. 97-462, § 2-4, 96 Stat. 2527-2530, eff. Feb. 26, 1983; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Nov. 18, 1988, Pub. L. 100-690, title VII, § 7047(b), 7049, 7050, 102 Stat. 4401; Apr. 30, 1991, eff. Dec. 1, 1991; Dec. 9, 1991, Pub. L. 102-198, § 11, 105 Stat. 1626; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 11, 1997, eff. Dec. 1, 1997; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 1999, eff. Dec. 1, 1999; Apr. 17, 2000, eff. Dec. 1, 2000.

RULES OF THE SUPREME COURT OF THE UNITED STATES

Procedure in original actions in Supreme Court of the United States, Federal Rules of Civil Procedure as guide, see rule 17, this Appendix.

The Federal Rules of Civil Procedure supplant the Equity Rules since in general they cover the field now covered by the Equity Rules and the Conformity Act (former section 724 of this title).

This table shows the Equity Rules to which references are made in the notes to the Federal Rules of Civil Procedure.

Equity Rules	Federal Rules of Civil Procedure
1	77
2	77
3	79
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7 ..... 4, 70
8 ..... 6, 70
9 70
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11 71
12 ..... 3, 4, 5, 12, 55
13 4
14 4
15 ..... 4, 45
16 ..... 6, 55
17 55
18 ..... 7, 8
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23 ..... 1, 39
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33 ..... 7, 12
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37 ..... 17, 19, 20, 24
38 23
39 19
40 20
41 17
42 ..... 19, 20
43 ..... 12, 21
44 ..... 12, 21
45 25
46 ..... 43, 61
47 26
48 43
49 53
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52 ..... 45, 53
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57 40
58 ..... 26, 33, 34, 36
59 53
60 53
61 53
61\1/2\ 53
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RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

- I. SCOPE OF RULES--ONE FORM OF ACTION
- II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS
- III. PLEADINGS AND MOTIONS
- IV. PARTIES
- V. DEPOSITIONS AND DISCOVERY
- VI. TRIALS
- VII. JUDGMENT
- VIII. PROVISIONAL AND FINAL REMEDIES
- IX. SPECIAL PROCEEDINGS
- X. DISTRICT COURTS AND CLERKS
- XI. GENERAL PROVISIONS
- APPENDIX OF FORMS
- SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

The 10 Planks of Administrative Equity

A. Before we get to those 10 planks we might want to first read Exhibit A.

1. Make sure you read Exhibit A, 2 of 3 at the arrow very closely and let it sink in.

   a. We have had a number of people read that statement and reply "so".

   b. Those people don't even know just how closely they are being watched and controlled.

   c. Quite frankly, most do not care.

   d. Then there are those of us who do care.

B. Most law and economic analysis evaluates legal rules solely on basis of the efficiency criteria, the justification being those distributive goals are best accomplished through the tax code.

1. This shows that:

   a. Even in the presence of an optimally redistributive tax, any concern for "equity dictates that what are perceived to be legal rules should deviate from efficient standards in a manner that redistributes alleged wealth toward the less well-off.

   b. Any showing that difference in taxable attributes such as income or wealth are the dominant components of over all inequality would go only to the direction of the proper equity adjustment to legal rules, not to the fact that some adjustment should be made.

   c. The role of equity adjustments to legal rules is not limited to correcting inequalities arising within the legal system but extends to correcting inequalities arising in other areas of the economy.

C. Go to Exhibit A, 2 of 3, at the arrow where it says, "those who deviate the greatest from a standard of behavior should be the ones who receive a more severe penalty."

1. In other words what this is saying is:

   a. Good doggie.

   b. Bad doggie.

2. How do you like being held to the Bank of England's behavior modification program?

3. They are bound to make you believe their half-truths, fictional presentments, and out right lies.

   a. If you do not then they will try to correct your behavior standards.

   b. Why, everyone else believes what the IRS tells them to believe! What is your problem?

D. Look at title 26 USC 7806.

1. If you read this section they left themselves out.

2. If you notice they didn't put this section in the front of the title but hid it in the back of the title.

3. This is pure Administrative Equity at its best.

4. This one section could take up a whole "VIP Dispatch" issue in itself.

5. We encourage you to read this about ten times or at least until you realize what a joke title 26 USC really is.

6. This is one of the reasons that Title 26 USC cannot be positive law.

7. Nothing in Title 26 USC can be held to mean what they say.

E. Go to Exhibit C, 1 of 1, which is the last page of the Social Security Act of August 14th, 1935. (#84 on our literature list).

1. Go to the first arrow and read Section 1103 and section 1104.

2. How is that for Administrative Equity Law?

3. Congress can change the SSA anytime and any way they wish and they have done that many times, since its inception.

   a. And to add insult to injury, like the IRS, there has never been any accounting of the funds that have been sent to the IRS for social security purposes.

   b. Under the Administrative Equity system they do not have to be accountable for those funds.

c. No judge will make them accountable either.

d. If you do not believe the fictions they have told you, they will try to modify your behavioral pattern and "fix your thought process."

F. The supreme behavior modification at its best.

1. Now go to the next five pages titled, "the Ten Planks of the Communist Manifesto."

2. After going through these ten items ask yourself if you are a practicing Communist.

3. Administrative Agencies are designed to implement and support these ten goals.

4. They had to use Administrative Equity laws to change the belief patterns of the American people and herd them into a boxcar mentally.

   a. Don't look or ask where they are taking you, just follow the leader.

5. How many times have you heard someone say:

   a. I believe that everyone should be under the zoning laws.

   b. I believe that everyone should file a tax return.

   c. I believe that everyone should pay an inheritance tax.

   d. I believe that everyone should do what the government tells them.

   e. I believe that everyone should support the Feds.

(20)110 (7-15-96) Comprehensive Strategy

(20)111 (7-15-96) Background

(1) In 1955 there were about 14 penalty provisions in the Internal Revenue Code. There are now over ten times that many. With the increasing number of penalty provisions, the Service recognized the need to develop a fair, consistent, and comprehensive approach to penalty administration.

(2) The Commissioner established a task force in November 1987 to study civil penalties. The task force could not reach a consensus on many basic issues: how should the term "penalty" be defined; what are the purposes of penalties; what are the characteristics of those penalties that work well as opposed to those that do not. In addition, the task force found many inconsistencies with the law as it existed prior to the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239, OBRA 1989) and in the way the Service administered the penalty programs.

(a) Inconsistencies existed among regions, service centers, district offices, and the many functions within each of these. These inconsistencies were due to such factors as varying degrees of training and experience, the functional procedures available, competing priorities, and the allocation of resources within a function.

(b) Inconsistencies also existed between personnel within a given function; these were due to differing attitudes about noncompliant behavior, the perceived fairness of the penalty, an individual's personal experience with a similar situation, or an individual's beliefs about the purpose of penalties.

(3) The Commissioner's Executive Task Force issued the "Report on Civil Tax Penalties" in February 1989. The report established a philosophy concerning penalties, provided a statutory analysis of the three broad categories of penalties (filing of returns, payment of tax, accuracy of information), and made recommendations where warranted to resolve the inconsistencies. Those recommendations were, in part:

(a) the Service should develop and adopt a single penalty policy statement emphasizing that civil tax penalties exist for the purpose of encouraging voluntary compliance;

(b) the Service should develop a single consolidated handbook on penalties for all

Exhibit A 1 of 3

employees. The handbook should be sufficiently detailed to serve as a practical everyday guide for most issues of penalty administration and provide clear guidance on computing penalties;

(c) the Service should revise existing training programs to ensure consistent administration of penalties in all functions for the purpose of encouraging voluntary compliance.

(d) the Service should examine its communications with taxpayers (including penalty notices and publications) to determine whether these communications do the best possible job of explaining why the penalty was imposed and how to avoid the penalty in the future;

(e) the Service should finalize its review and analysis of the quality and clarity of machine-generated letters and notices used in the Adjustments and Correspondence Branches of the service centers; and

(f) the Service should consider ways to develop better information concerning the administration and effects of penalties. The Service should develop a master file database to provide statistical information regarding the administration of penalties. That information would be continuously reviewed for the purpose of suggesting changes in compliance programs, educational programs, penalty design and penalty administration.

(4) Public Law 101-239, OBRA 1989, consolidated and restructured many penalty Code sections to address inconsistencies. In addition, the committee reports for OBRA 1989 included the points in (2) above as general administrative recommendations to the Service.

(5) In keeping with the Commissioner's Executive Task Force Report and Congressional recommendations, the consolidated penalty IRM was developed.

(20)112 (7-15-95) Penalty Program

(1) The Service is committed to evaluating and improving the penalty program. It is an ongoing process which takes into account changing statutory rules, economic and financial conditions, and taxpayer attitudes.

(2) The Service is developing a penalty management information system to monitor penalty administration on an ongoing basis. Diagnosing noncompliance and formulating plans for better compliance requires information based on assessment and abatement data.

(a) Evaluating and improving the taxpayer's perceptions of fair treatment requires information on the way penalty cases are administered and an insight into taxpayer attitudes and conduct.

(b) Changing the penalties themselves requires information regarding compliance levels and the characteristics of effective penalties.

(3) Penalty programs should continually identify the most effective way to encourage compliance through the administration of penalties. Those who deviate the greatest from a standard of behavior should be the ones who receive a more severe penalty.

Exhibit A 2 of 3

(4) The Service will identify and work with groups of taxpayers that are at risk of incurring penalties, (such as small businesses,) in an effort to assist in preventing penalty assertions.

(5) The Service maintains a consolidated penalty manual that serves as the source of all technical and procedural information for penalties, desk procedures, training material (internal and external), and locally adopted material. Prior to implementing changes to penalty procedures, the changes must be reviewed for consistency with Policy Statement P-1-18 and approved by the Office of Penalty Administration.

(20)113 (7-15-96) Purpose of IRM (20)000

(1) The purpose of the consolidated penalty handbook is to provide guidance to all areas of the Service for all penalties imposed by the Internal Revenue Code. It sets forth procedures both for assessing and abating penalties and contains discussions on topics such as various types of relief from the penalties.

(2) IRM Part XX replaces all other internal management documents dealing with the administration of penalties, such as IRMs and handbooks developed by various functions. Part XX is the primary source of authority for the administration of penalties by the Service. Service functions may develop reference materials for their individual needs, such as desk guides. However, such reference material must receive approval from the Office of Penalty Administration prior to distribution and remain consistent with:

(a) the procedures set forth in this IRM, and

(b) the philosophy of the penalty policy statement.

(3) The penalty manual serves as the foundation for addressing inconsistent administration of penalties by various Service functions. By providing one source of authority for the administration of penalties, the Service greatly reduces inconsistencies regarding attitudes and procedures.

(20)114 (7-15-96) Organization of IRM (20)000

(1) This manual is arranged in a user-friendly format. The chapters follow the logical sequence of events when working a penalty case. Appropriate headings are provided which describe the text that follows.

(2) The manual is designed for use both as an everyday reference guide and as a training document. Figures and examples are included in the text where they are most useful. Figures which are referenced frequently throughout the text are included as chapter exhibits to conserve space.

(3) The manual contains criteria, guidelines, and procedures for asserting, not asserting, and abating penalties. Chapters are included covering the penalty policy statement and philosophy, the application of reasonable cause, and the procedures for penalty appeals. The chapters in Part XX are:

(a)	(20)100	Introduction
1	(20)110	Comprehensive Strategy

Exhibit A 3 of 3

specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

In '76, P.L. 94-455, Sec. 1906(a)(58), redesignated subsec. (d) as (c), effective 2/1/77.

—P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 7803, effective 2/1/77.

In '72, P.L. 92-310, 6/6/72, Sec. 230(e), repealed subsec. (c). Prior to repeal subsec. (c) read as follows:

"(c) Bonds of employees.

"Whenever the Secretary or his delegate deems it proper, he may require any such officer or employee to furnish such bond, or he may purchase such blanket or schedule bonds, as the Secretary or his delegate deems appropriate. The premium of any such bond or bonds may, in the discretion of the Secretary or his delegate, be paid from the appropriation for expenses of the Internal Revenue Service."

Sec. 7804. Effect of reorganization plans.

(a) Application.

The provisions of Reorganization Plan Numbered 26 of 1950 and Reorganization Plan Numbered 1 of 1952 shall be applicable to all functions vested by this title, or by any act amending this title (except as otherwise expressly provided in such amending act), in any officer, employee, or agency, of the Department of the Treasury.

(b) Preservation of existing rights and remedies.

Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

In '76, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" in subsec. (b), effective 2/1/77.

Sec. 7805. Rules and regulations.

(a) Authorization.

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) Retroactivity of regulations or rulings.

The Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) Preparation and distribution of regulations, forms, stamps, and other matters.

The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

(d) Manner of making elections prescribed by secretary.

Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall by regulations or forms prescribe.

In '84, P.L. 98-369, Sec. 43(b), added subsec. (d), effective 7/18/84.

In '76, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in Code Sec. 7805, effective 2/1/77.

Sec. 7806. Construction of title.

(a) Cross references.

The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) Arrangement and classification.

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

Sec. 7807. Rules in effect upon enactment of this title.

(a) Interim provision for administration of title.

Until regulations are promulgated under any provision of this title which depends for its application upon the promulgation of regulations (or which is to be applied in such manner as may be prescribed by regulations) all instructions, rules or regulations which are in effect immediately prior to the enactment of this title shall, to the extent such instructions, rules, or regulations could be prescribed as regulations under authority of such provision, be applied as if promulgated as regulations under such provision.

(b) Provisions of this title corresponding to prior internal revenue laws.

(1) Reference to law applicable to prior period. Any provision of this title which refers to the application of any portion of this title to a prior period (or which depends upon the application to a prior period of any portion of this title) shall, when appropriate and consistent with the purpose of such provision, be deemed to refer to (or depend upon the application of) the corresponding provision of the Internal Revenue Code of 1939 or of such other internal revenue laws as were applicable to the prior period.

(2) Elections or other acts. If an election or other act under the provisions of the Internal Revenue Code of 1939 would, if this title had not been enacted, be given effect for a period subsequent to the date of enactment of this title, and if corresponding provisions are contained in this title, such election or other act shall be given effect under the corresponding provisions of this title.

Sec. 7808. Depositaries for collections.

The Secretary is authorized to designate one or more depositaries in each State for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depositary to the proper officer or employee of the Treasury Department for the money deposited by him shall be a sufficient voucher for such Treasury officer or employee in the settlement of his accounts.

In '76, P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" in Code Sec. 7808, effective 2/1/77.

Exhibit B 1 of 1

Separability of provisions.

SEPARABILITY

SEC. 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

Reservation of power.

RESERVATION OF POWER

SEC. 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

Short title.

SHORT TITLE

SEC. 1105. This Act may be cited as the "Social Security Act".

Approved, August 14, 1935.

[CHAPTER 532.]

August 14, 1935.
[S. 12.]
[Public, No. 272.]

AN ACT

To amend the Packers and Stockyards Act.

Packers and Stockyards Act, amendments.
Vol. 42, p. 159.
U. S. C., p. 125.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act to regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs, and for other purposes, approved August 15, 1921 (U. S. C., title 7, secs. 181–229), is hereby amended by the addition of the following title:

Title V—Live poultry dealers and handlers.
Necessity for regulation.
Post, p. 1432.

"TITLE V—LIVE POULTRY DEALERS AND HANDLERS

"SECTION 501. The handling of the great volume of live poultry required as an article of food for the inhabitants of large centers of population is attendant with various unfair, deceptive, and fraudulent practices and devices, resulting in the producers sustaining sundry losses and receiving prices far below the reasonable value of their live poultry in comparison with prices of other commodities and in unduly and arbitrarily enhancing the cost to the consumers. Such practices and devices are an undue restraint and unjust burden upon interstate commerce and are a matter of such grave concern to the industry and to the public as to make it imperative that steps be taken to free such commerce from such burden and restraint and to protect producers and consumers against such practices and devices.

Licenses; designation of areas where required.

"SEC. 502. (a) The Secretary of Agriculture is authorized and directed to ascertain from time to time and to designate the cities where such practices and devices exist to the extent stated in the preceding section and the markets and places in or near such cities where live poultry is received, sold, and handled in sufficient quantity to constitute an important influence on the supply and price of live poultry and poultry products. On and after the effective date of such designation, which shall be publicly announced by the Secretary by publication in one or more trade journals or in the daily press or in such other manner as he may determine to be adequate for the purpose approximately thirty days prior to such date, no person other than packers as defined in title II of said Act and railroads shall engage in, furnish, or conduct any service or facility in any such designated city, place, or market in connection with the receiving, buying, or selling, on a commission basis or otherwise, marketing, feeding, watering, holding, delivering, shipping, weighing, unloading, loading on trucks, trucking, or handling in commerce of

Publication of effective date of designations.

Requirement of license thereafter.
Vol. 42, p. 160.

Exhibit C 1 of 1

The Ten Planks of the Communist Manifesto

1848 by Karl Heinrich Marx

How "Marxist" Has the United States Become?

Although Marx advocated the use of any means, especially including violent revolution, to bring about socialist dictatorship, he suggested ten political goals for developed countries such as the United States. How far has the United States -- traditionally the bastion of freedom, free markets, and private property -- gone down the Marxist road to fulfill these socialist aims? You be the judge. The following are Marx's ten planks from his *Communist Manifesto*.

1. Abolition of private property and the application of all rent to public purpose.

The courts have interpreted the 14th Amendment of the U.S. Constitution (1868) to give the government far more "eminent domain" power than was originally intended, Under the rubric of "eminent domain" and various zoning regulations, land use regulations by the Bureau of Land Managementproperty taxes, and "environmental" excuses, private property rights have become very diluted and private property in landis, vehicles, and other forms are seized almost every day in this country under the "forfeiture" provisions of the RICO statutes and the so-called War on Drugs..

2. A heavy progressive or graduated income tax.

The 16th Amendment of the U.S. Constitution, 1913 (which some scholars maintain was never properly ratified), and various State income taxes, established this major Marxist coup in the United States many decades ago. These taxes continue to drain the lifeblood out of the American economy and greatly reduce the accumulation of desperately needed capital for future growth, business starts, job creation, and salary increases.

3. Abolition of all rights of inheritance

Another Marxian attack on private property rights is in the form of Federal & State estate taxes and other inheritance taxes, which have

abolished or at least greatly diluted the right of private property owners to determine the disposition and distribution of their estates upon their death. Instead, government bureaucrats get their greedy hands involved .

4. Confiscation of the property of all emigrants and rebels

We call it government seizures, tax liens, "forfeiture" Public "law" 99-570 (1986); Executive order 11490, sections 1205, 2002 which gives private land to the Department of Urban Development; the imprisonment of "terrorists" and those who speak out or write against the "government" (1997 Crime/Terrorist Bill); or the IRS confiscation of property without due process.

5. Centralization of credit in the hands of the state, by means of a national bank with state capital and an exclusive monopoly.

The Federal Reserve System, created by the Federal Reserve Act of Congress in 1913, is indeed such a "national bank" and it politically manipulates interest rates and holds a monopoly on legal counterfeiting in the United States. This is exactly what Marx had in mind and completely fulfills this plank, another major socialist objective. Yet, most Americans naively believe the U.S. of A. is far from a Marcxist or socialist nation.

6. Centralization of the means of communication and transportation in the hands of the State

In the U.S., communication and transportation are controlled and regulated by the Federal Communications Commission (FCC) established by the Communications Act of 1934 and the Department of Transportation and the Interstate Commerce Commission (established by Congress in 1887), and the Federal Aviation Administration as well as Executive orders 11490, 10999 -- not to mention various state bureaucracies and regulations. There is also the federal postal monopoly, AMTRAK and CONRAIL -- outright socialist (government-owned) enterprises. Instead of free-market private enteprrise in these important industries, these fields in America are semi-cartelized through the government's regulatory-industiral complex.

7. Extension of factories and instruments of production owned by the State, the bringing into cultivation of waste lands, and the improvement of the soil generally in accordance with a common plan.

We call it corporate capacity, The Desert Entry Act and The

Department of Agriculture. As well as the Department of Commerce and Labor, Department of Interior, the Evironmental Protection Agency, Bureau of Land Management, Bureau of Reclamation, Bureau of Mines, National Park Service, and the IRS control of business through corporate regulations.

8. Equal liablity of all to labor. Establishment of Industrial armies, especially for agriculture.

We call it the Social Security Administration and The Department of Labor. The National debt and inflation caused by the communal bank has caused the need for a two "income" family. Woman in the workplace since the 1920's, the 19th amendment of the U.S. Constitution, the Civil Rights Act of 1964, assorted Socialist Unions, affirmative action, the Federal Public Works Program and of course Executive order 11000. And I almost forgot...The Equal Rights Amendment means that women should do all work that men do including the military and since passage it would make women subject to the draft.

9. Combination of agriculture with manufacturing industries; gradual abolition of the distinction between town and country by a more equable distribution of the population over the country.

We call it the Planning Reorganization Act of 1949 , zoning (Title 17 1910-1990) and Super Corporate Farms, as well as Executive orders 11647, 11731 (ten regions) and Public "law" 89-136.

10. Free education for all children in government schools. Abolition of children's factory labor in its present form. Combination of education with industrial production, etc. etc.

People are being taxed to support what we call 'public' schools, which train the young to work for the communal debt system. We also call it the Department of Education, the NEA and Outcome Based "Education" .

So, is the U.S. a "free country" today? Hardly! Not compared to what it once was. Yet, very few Americans today challenge these Marxist institutions, and there are virtually no politicians calling for their repeal or even gradual phase-out. While the United

States of America may still have more freedoms than most other countries, we have nonetheless lost many crucial liberties and have accepted the major socialist attacks on freedom and private property as normal parts of our way of life. The nation, whose founders included such individualists as Thomas Jefferson, George Mason, James Madison, John Adams and Patrick Henry, has gradually turned away from the principles of individual rights, limited constitutional government, private property, and free markets and instead we increasingly have embraced the failed ideas and nostrums of socialism and fascism. We should hang our heads in shame for having allowed this to happen.

But, it is not too late to reverse these pernicious burdens and instead enact pro-freedom reforms to put our nation back on track again. It can be done.

In some ways the Left has a head start over us on the pro-freedom Right. The enemies of American freedom do admittedly dominate the entertainment industry, television news media, and academia -- but we have the tremendous strategic advantage that reality (including man's nature) is on our side; so, unlike the socialists and "liberals" (welfare-state fascists), we are not in the position of having to advocate a system which constantly tries to "make water to go uphill" -- or force human beings into a rigid utopian staitjacket based on the whims of some clique of central planning bureaucrats. We know that individual freedom for peaceful people within a constitutional republic works in practice; our country's history demonstrates that. The piecemeal abandonment of those principles and

institutions which once made America great has proved to be a a dead-end road to failure. That is why I tend to be a long-term optimist even though things often look pretty glum in the meantime. Just as Prohibition was eventually repealed, I feel encouraged that such key statist achievements as the income tax, government schools, fiat money/central banking (the Federal Reserve), "environmentalist" regulations, property forfeiture laws, and other Marxist planks and leftist institutions can be rolled back and repealed altogether, although it may take several decades.

Those who would carry forward the ideas and principles of self-ownership, private property, free markets, laissez faire, the rule of law, and constitutionalism which informed America's founders must become more active on the key ideological battle fronts. We need more influence not just in politics, but in areas of entertainment, academia, journalism, think tanks, churches (we need our own individualist Walter Rauschenbushes), literature, art, and other venues of expression and activism.

Marxism and socialism have proved to be colossal failures all over the world. As Frederic Bastiat wrote in his classic *The Law* just prior to his death, "let us now try liberty"!

FOIA Request

A. The following FOIA request should only be sent in "if" you have not been filing and they have sent you a CP-504 Notice or CP-518 or a 4549 CG statement.

   1. In other words the IRS is starting to come after you big time and they are sending you a number of documents.

B. The purpose of this first request is to obtain a copy of all the signed delegation orders in that office.

   1. In other words who is allowed to do what?

   2. This request could amount to several hundred pages but usually not.

      a. If they respond back telling you they need $20, $30, $40 before they can send this to you then we suggest you send them the funds.

C. In the second request we are asking for the specific delegation of authority of the IRS employee to do a substitute for return.

   1. You will want to send this one in "only" if there is a "SFR" posted to your IMF.

D. In the next FOIA request you are asking for a copy of the AIMS file they are maintaining about you.

   1. ONLY ask for this if there is an AIMS file number posted to your IMF or BMF.

      a. If there is no AIMS file posted to your file then do not ask for it.

   2. Remember your IMF or BMF changes as the IRS adds entries to it.

      a. If there is no AIMS file currently on your file now, there could be one posted later.

E. In this next request you are asking for a copy of a 5546 Form.

   1. If you get one of these back, it will usually tell you what excise taxable activity in which they have placed you.

   2. They were doing this twenty years ago and they are still doing it.

F. In this next request if you have found an AIMS number on your IMF or BMF, then, by all means, send in this request.

G. The last request pertains to someone who may be delinquent in filing or paying federal taxes.

1. If you are not delinquent in filing or paying Federal taxes then you would not be sending this FOIA request.

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(your local IRS district address)
(your local IRS district address)

FROM: (your name or entity name)
addr1
addr2

Account # (SS# or EIN#)

Dear Disclosure Officer:

1. This is a request under the Freedom of Information Act, 5 USC 552, or regulations thereunder. This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702 (f).

2. If some of this request is exempt from release, please furnish me with those portions reasonable segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. Please provide me with a complete and annotated file of all delegation of authority containing the delegation made to your office and by your office as required to be maintained by IRM 243.(11) MT 1230-21

5. As a matter of clarification I do not seek documents from the Delegation of Authority Handbook. I seek the signed orders which contain names of the above individuals and the signature of the person authorized to delegate authority.

6. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

Dated:

Respectfully,

_____
name, Qualified Requester

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(your local IRS district address)
(your local IRS district address)

FROM: (your name or entity name)
addr1
addr2

Account # (SS# or EIN#)

Dear Disclosure Officer:

1. This is a request under the Freedom of Information Act, 5 USC 552, or regulations thereunder. This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702 (f).

2. If some of this request is exempt from release, please furnish me with those portions reasonable segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. Please send me a copy of the (local IRS District) District Office delegation of authority for IRS employees to execute returns under Internal Revenue Code Section 6020(a), 6020(b), and 7602.

5. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

Dated:

Respectfully,

_____
name, Qualified Requester

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(your local IRS district address)
(your local IRS district address)

FROM: (your name or entity name)
addr1
addr2

Account # (SS# or EIN#)

Dear Disclosure Officer:

1. This is a request under the Freedom of Information Act, 5 USC 552, or regulations thereunder. This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702 (f).

2. If some of this request is exempt from release, please furnish me with those portions reasonable segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. Please send me a copy of all documents maintained in the system of records identified as Audit Information Management System (AIMS) – Treasury/IRS 42.008 (See Exhibit A) which pertains to the Requester.

5. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

Dated:

Respectfully,

_____
name, Qualified Requester

Federal Register

Monday,
December 10, 2001

Part III

Department of the Treasury

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records; Notice

EXHIBIT A

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802.

PURPOSE(S):

Numerous tax returns are examined each year. The system provides a complete record of the examinations of tax returns. It also allows IRS access to investigatory materials and management materials relating to examinations for purposes of tax administration and analysis of taxpayer compliance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, machine-sensible data media, microfilm.

RETRIEVABILITY:

By taxpayer's name, taxpayer identification number (social security number or employer identification number) and document locator number.

SAFEGUARDS:

Access controls will not be less than those provided for by Managers Security Handbook, IRM 1(16)12 and the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 202 for Examination—Regional and Area Offices, IRM 1(15)59.22.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices " Head of the Office that maintains the file-Wage and Investment, Small Business/Self employed, Tax Exempt Government Entities, Large and Mid Size Business, Area Directors, and Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system is exempt from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system is exempt from the access and contest provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

(1) Taxpayers' returns; (2) taxpayer's books and records; (3) informants and third party information; (4) city and state governments; (5) other Federal agencies; (6) examinations of related taxpayers; (7) examinations of other taxpayers, and (8) taxpayer's representative.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 42.008

SYSTEM NAME:

Audit Information Management System (AIMS)-Treasury/IRS.

SYSTEM LOCATION:

This system is composed of (1) computer files located at each jurisdictional IRS Service Center (where tax return is under examination control); (2) video terminals located at each jurisdictional area (served by an IRS Service Center), National Office; and (3) group control card forms 5345 and 5354 (including temporary and interim processing files for management and control purposes), located at each jurisdictional area office. Items described under (3) above are subfiles of the AIMS System. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers whose tax returns are under the jurisdiction of the Examination Division. Examiners assigned to taxpayer cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Tax return information from the Master File, Tax return status and location changes, Examination Closing information on examined and non-examined tax returns, examiner's name, including related internal management information and a code identifying taxpayers that threatened or assaulted IRS employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

PURPOSE(S):

AIMS is a computer system designed to give Examination Division information about returns in inventory and closed returns. This allows IRS to identify the status and location of tax returns in Examination and prepare analyses of the examination process. It includes Exam Returns Control System (ERCS) records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer, microfiche, paper.

RETRIEVABILITY:

By taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided for by Managers Security Handbook, IRM 1(16)12 and the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Computer Record: Examined closings, surveyed claims and some types of non-examined closings are dropped from the data base 60 days after closing or when assessment verification is completed, whichever is later. The balance of non-examined closings are dropped at the end of the month following the month of closing. Paper Records: Generally, AIMS forms are destroyed within 90 days of the closing. Exceptions include: (1) The charge-out which becomes part of the case file and is sent to the Federal Records Center with the case; (2) Examination request forms which become the Examination group's control card; and (3) The Examination group's control card which is retained in a closed file for 3 years (in the case of field examinations) and 90 days (in the case of office examinations). Authority: Records Disposition Handbooks, IRM 1.15.2.1 through IRM 1.15.2.31.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices " Management Official(SB/SE, TE/GE. W&I). Officials maintaining the system -, Area Directors, and Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system is exempt from the notification provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system is exempt from the access and contest provisions of the Privacy Act.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

EXHIBIT A 3

RECORD SOURCE CATEGORIES:

Tax Returns and Examination files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 42.013

SYSTEM NAME:

Project Files for the Uniform Application of Laws as a Result of Technical Determinations and Court Decisions-Treasury/IRS.

SYSTEM LOCATION:

Area offices. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals grouped as to project, i.e., individual shareholders of a corporation where a determination having a tax effect has been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listing of individuals and their income tax information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

PURPOSE(S):

In some instances, a technical determination either from an examination or from a Chief Counsel ruling or court decision will result in tax effect to shareholders of a corporation. This system allows the IRS to monitor and control the shareholder returns that are included in the project.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and magnetic media.

RETRIEVABILITY:

By taxpayer's name and social security number.

SAFEGUARDS:

Access controls will not be less than those provided for by Managers Security Handbook, IRM 1(16)12 and the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Control Schedule 102 for Examination Division—National Office, IRM 1.15.2.16.

SYSTEM MANAGER(S) AND ADDRESS:

Officials prescribing policies and practices—Assistant Commissioner (W&I, SB/SE,TE/GE, LMSB) and Director(International). Officials maintaining the system—Director of appropriate area where the taxpayer resides. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Area Director in the Area where the records are located. (See IRS appendix A for addresses.) Contesting record procedures: 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

(1) Shareholder records, (2) individual's tax return, and (3) examination of related taxpayer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 42.014

SYSTEM NAME:

Internal Revenue Service Employees' Returns Control Files-Treasury/IRS.

SYSTEM LOCATION:

Area Offices (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is employed by the Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical listing of employee, income tax return information including prior examination results and other tax related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801 and 7802.

PURPOSE(S):

This system provides administrative controls for tax returns of Internal Revenue Service employees considered for examination, being examined, or previously examined.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, machine-sensible data media, microfilm.

RETRIEVABILITY:

By employee's name and social security number.

SAFEGUARDS:

Access controls will not be less than those provided for by Managers Security Handbook, IRM 1(16)12 and the Automated Information System Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1.15.2.1 through IRM 1.15.2.31. Generally, records are periodically updated to reflect changes and retained as long as the individual is employed.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Examination). Officials maintaining the system—Director of Area where individual resides. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the Area Director in the Area where the records are located. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Employee's tax return.

EXHIBIT A 3

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(your local IRS district address)
(your local IRS district address)

FROM: (your name or entity name)
addr1
addr2

Account # (SS# or EIN#)

Dear Disclosure Officer:

1. This is a request under the Freedom of Information Act, 5 USC 552, or regulations thereunder. This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702 (f).

2. If some of this request is exempt from release, please furnish me with those portions reasonable segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. Please send me a copy of "Form 5546" which pertains to the Requester.

5. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

Dated:

Respectfully,

_____
name, Qualified Requester

FREEDOM OF INFORMATION ACT REQUEST

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Disclosure Officer
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(your local IRS district address)
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2. If some of this request is exempt from release, please furnish me with those portions reasonable segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. Please send me a copy of the document which discloses the identification number of the audit group and branch to which Requester's case has been assigned.

5. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

Dated:

Respectfully,

_____
name, Qualified Requester

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(your local IRS district address)
(your local IRS district address)

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Dear Disclosure Officer:

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2. If some of this request is exempt from release, please furnish me with those portions reasonable segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. Please send me a copy of all documents maintained in a system of records know as Return Compliance Program (RCP) 26.016 (See Exhibit A) which pertains to Requester.

5. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

Dated:

Respectfully,

_____
name, Qualified Requester

Federal Register

Monday,
December 10, 2001

Part III

Department of the Treasury

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records; Notice

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1.15.2.1 through IRM 1.15.2.31.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices: Assistant Commissioner (SB/SE, W&I, LMSB). Officials maintaining the system: Area Directors, Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.014

SYSTEM NAME:

Record 21, Record of Seizure and Sale of Real Property-Treasury/IRS.

SYSTEM LOCATION:

Area Offices (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals against whom tax assessments have been made and whose real property was seized and sold to satisfy their tax liability. Also name and address of purchaser.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, dollar amounts, property description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

PURPOSE(S):

This system provides a record of all sales under 26 U.S.C. 6335 of real property as required by 26 U.S.C. 6390. The contents of this system of records evidences chain of title to real property and is a matter of public record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number) and seizure number.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1.15.2.1 through IRM 1.15.2.31.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (SB/SE, W&I, LMSB); Officials maintaining the system—Area Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to themselves may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to or individuals may appear in person at the Office of the Area Director for each Area whose records are to be searched. (See IRS appendix A for addresses.)

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records evidences chain of title to real property and is a matter of public record. (See "Categories of records in the system" above).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Treasury/IRS 26.016

SYSTEM NAME:

Returns Compliance Programs-Treasury/IRS.

SYSTEM LOCATION:

Area Offices and Internal Revenue Service Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers who may be delinquent in filing or paying Federal taxes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of name, address, taxpayer identification number (if known) and information concerning the potential tax liability. Returns Compliance Programs involve any type of Federal tax administered by the SB/SE, W&I, LMSB Division and are conducted in accordance with section 7601 of the Internal Revenue Code. RCP programs can be initiated by the National Office, Area offices, or by individual areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

PURPOSE(S):

This program identifies individuals who may be delinquent in filing or paying Federal tax.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, taxpayer identification number (social security number or employer identification number).

Exhibit A 2 of 3

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1.15.2.1 through IRM 1.15.2.31.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices-Assistant Commissioner (SB/SE, W&I, LMSB), Officials maintaining the system-Area Directors and Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.019

SYSTEM NAME:

Taxpayer Delinquent Account (TDA) Files, including subsystems: (a) Adjustments and Payment Tracers Files, (b) Collateral Files, (c) Seized Property Records, (d) Tax SB/SE, W&I, LMSB Waiver, Forms 900, Files, and (e) Accounts on Child Support Obligations-Treasury/IRS.

SYSTEM LOCATION:

Area Offices and Internal Revenue Service Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers on whom Federal tax assessments have been made, and persons who owe child support obligations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information about basis of assessment, including class of tax, period, dollar amounts, chronological investigative history, canceled checks, amended returns, claims, collateral submitted to stay SB/SE, W&I, LMSB, copies of notices of Federal tax liens, revenue officer reports, waivers to extend statutory period for SB/SE, W&I, LMSB, etc, and similar information about persons who owe child support obligations. This system includes Installment Agreement Files; Delinquent Account Inventory Profile (DAIP); Currently Not Collectible Register; Currently Not Collectible Register (over $25,000); Advance Dated Remittance Check Files; Currently Not Collectible Accounts Files; File of taxpayer names entered in the Treasury Enforcement Communications System and a code identifying taxpayers that threatened or assaulted IRS employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

PURPOSE(S):

The Taxpayer Delinquent Account (TDA) records provide a comprehensive inventory control of delinquent accounts. This system includes records for Adjustments and Payment Tracers files, collateral files, seized property records, Tax SB/SE, W&I, LMSB Waiver Form 900 files, Accounts on Child Support Obligations, Dyed Diesel Fuel Program, and Integrated SB/SE, W&I, LMSB System (ICS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By taxpayer name, or name of person who owes child support obligations, and taxpayer identification number (social security number or employer identification number).

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1.15.2.1 through IRM 1.15.2.31.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (SB/SE, W&I, LMSB). Officials maintaining the system—Assistant Regional Commissioners (SB/SE, W&I, LMSB), Area Directors, Internal Revenue Service Center Directors. (See IRS appendix A for addresses.)

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system has been designated as exempt from certain provisions of the Privacy Act.

Treasury/IRS 26.020

SYSTEM NAME:

Taxpayer Delinquency Investigation (TDI) Files—Treasury/IRS.

SYSTEM LOCATION:

Area Offices and Internal Revenue Service Centers. (See IRS appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers believed to be delinquent in filing Federal tax returns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Taxpayer name, address, taxpayer identification number, information from previously filed returns, information about the potential delinquent return(s), including class of tax, chronological investigative history; Delinquency Investigation Inventory Profile (DIIP) and a code identifying taxpayers that threatened or assaulted IRS employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7801 and 7802.

PURPOSE(S):

The purpose of this system is to establish a control on taxpayers on whom tax assessments have been made.

Exhibit A 3 of 3

Disciplinary Rules of Professional Conduct

A. A lawyer shall not knowingly:

1. Make a false statement of material fact or law to a tribunal;

2. Fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

3. In an ex parte proceeding, fail to disclose to the tribunal an unprivileged fact which the lawyer reasonably believes should be known by that entity for it to make an informed decision;

4. Fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

5. Offer or use evidence that the lawyer knows to be false.

B. If a lawyer has offered material evidence and comes to know of this falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measure, including disclosure of the true facts.

C. It is axiomatic that a lawyer shall not, at any time, including when propounding or responding to discovery requests, make a false statement. Further, all lawyers know their client should not lie on the witness stand, and every lawyer knows that they must not make a false statement of material fact to the court.

Who's On First?

Bud Abbot and Lou Costello

Lou: I love baseball. When we get to St. Louis, will you tell me the guys' name on the team so when I go to see them in that St. Louis ball park I'll be able to know those fellows?
Bud: All right. but you know, strange as it may seems, they give ball players nowadays very peculiar names, nick names, like "Dizzy Dean." Now on the St. Louis team we have Who's on first, What's on second, I Don't Know is on third --
Lou: That's what I want to find out. I want you to tell me the names of the fellows on the St. Louis team.
Bud: I'm telling you. Who's on first, What's on second, I Don't Know is on third --
Lou: You know the fellows' names?
Bud: Yes.
Lou: Well, then who's playin' first.
Bud: Yes.
Lou: I mean the fellow's name on first base.
Bud: Who.
Lou: The fellow playin' first base for St. Louis.
Bud: Who.
Lou: The guy on first base.
Bud: Who is on first.
Lou: Well, what are you askin' me for?
Bud: I'm not asking you -- I'm telling you. WHO IS ON FIRST.
Lou: I'm asking you -- who's on first?
Bud: That's the man's name!
Lou: That's who's name?
Bud: Yes.
Lou: Well, go ahead and tell me.
Bud: Who.
Lou: The guy on first.
Bud: Who.
Lou: The first baseman.
Bud: Who is on first.
Lou: Have you got a first baseman on first?
Bud: Certainly.
Lou: Then who's playing first?
Bud: Absolutely.
Lou: (pause) When you pay off the first baseman every month, who gets the money?
Bud: Every dollar of it. And why not, the man's entitled to it.
Lou: Who is?
Bud: Yes.
Lou: So who gets it?
Bud: Why shouldn't he? Sometimes his wife comes down and collects it.
Lou: Who's wife?
Bud: Yes. After all the man earns it.
Lou: Who does?
Bud: Absolutely.

Lou: Well all I'm trying to find out is what's the guys name on first base.
Bud: Oh, no, no, What is on second base.
Lou: I'm not asking you who's on second.
Bud: Who's on first.
Lou: That's what I'm trying to find out.
Bud: Well, don't change the players around.
Lou: I'm not changing nobody.
Bud: Now, take it easy.
Lou: What's the guy's name on first base?
Bud: What's the guy's name on second base.
Lou: I'm not askin' ya who's on second.
Bud: Who's on first.
Lou: I don't know.
Bud: He's on third. We're not talking about him.
Lou: How could I get on third base?
Bud: You mentioned his name.
Lou: If I mentioned the third baseman's name, who did I say is playing third?
Bud: No, Who's playing first.
Lou: Stay offa first, will ya?
Bud: Well what do you want me to do?
Lou: Now what's the guy's name on first base?
Bud: What's on second.
Lou: I'm not asking ya who's on second.
Bud: Who's on first.
Lou: I don't know.
Bud: He's on third.
Lou: There I go back on third again.
Bud: Well, I can't change their names.
Lou: Say, will you please stay on third base.
Bud: Please. Now what is it you want to know.
Lou: What is the fellow's name on third base.
Bud: What is the fellow's name on second base.
Lou: I'm not askin' ya who's on second.
Bud: Who's on first.
Lou: I don't know.
Bud: THIRD BASE!
Lou: You got an outfield?
Bud: Oh, sure.
Lou: St. Louis has got a good outfield?
Bud: Oh, absolutely.
Lou: The left fielder's name?
Bud: Why.
Lou: I don't know, I just thought I'd ask.
Bud: Well, I just thought I'd tell you.
Lou: Them tell me who's playing left field.
Bud: Who's playing first.
Lou: Stay out of the infield!
Bud: Don't mention any names out here.
Lou: I want to know what's the fellow's name on left field?
Bud: What is on second.
Lou: I'm not askin' ya who's on second.

Bud: Who is on first.
Lou: I don't know.
Bud & Lou: (together and calmly) Third base.
Lou: And the left fielder's name?
Bud: Why.
Lou: Because.
Bud: Oh he's Center Field.
Lou: (whimpers) Center field.
Bud: Yes.
Lou: Wait a minute. You got a pitcher on this team.
Bud: Wouldn't this be a fine team without a pitcher.
Lou: I don't know. Tell me the pitcher's name.
Bud: Tomorrow.
Lou: You don't want to tell me today?
Bud: I'm tell you, man.
Lou: Then go ahead.
Bud: Tomorrow.
Lou: What time?
Bud: What time what?
Lou: What time tomorrow are you gonna tell me who's pitching?
Bud: Now listen, Who is not pitching. Who is on --
Lou: I'LL BREAK YOU ARM IF YOU SAY "WHO'S ON FIRST!"
Bud: Then why come up here and ask?
Lou: I want to know what's the pitcher's name.
Bud: What's on second.
Lou: I don't know.
Bud & Lou: (VERY QUICKLY) THIRD BASE!!
Lou: You gotta Catcher?
Bud: Yes.
Lou: The Catcher's name?
Bud: Today.
Lou: Today. And Tomorrow's pitching.
Bud: Now you've got it.
Lou: That's all. St. Louis has a couple of days on their team.
Bud: Well I can't help that.
Lou: You know I'm a good catcher too.
Bud: I know that.
Lou: I would like to play for the St. Louis team.
Bud: Well I might arrange that.
Lou: I would like to catch. Now I'm being a good Catcher, tomorrow's pitching on the team, and I'm catching.
Bud: Yes.
Lou: Tomorrow throws the ball and the guy up bunts the ball.
Bud: Yes.
Lou: Now when he bunts the ball -- me being a good catcher -- I want to throw the guy out a first base, so I pick up the ball and throw it to who?
Bud: Now that's the first thing you've said right.
Lou: I DON'T EVEN KNOW WHAT I'M TALKING ABOUT!!!!!
Bud: Well, that's all you have to do.
Lou: Is to throw it to first base.
Bud: Yes.
Lou: Now who's got it?

Bud: Naturally.
Lou: Who has it?
Bud: Naturally.
Lou: Naturally.
Bud: Naturally.
Lou: O.K.
Bud: Now you've got it.
Lou: I pick up the ball and I throw it to Naturally.
Bud: No you don't you throw the ball to first base.
Lou: Then who gets it?
Bud: Naturally.
Lou: O.K.
Bud: All right.
Lou: I throw the ball to Naturally.
Bud: You don't you throw it to Who.
Lou: Naturally.
Bud: Well, naturally. Say it that way.
Lou: That's what I said.
Bud: You did not.
Lou: I said I'd throw the ball to Naturally.
Bud: You don't. You throw it to Who.
Lou: Naturally.
Bud: Yes.
Lou: So I throw the ball to first base and Naturally gets it.
Bud: No. You throw the ball to first base--
Lou: Then who gets it?
Bud: Naturally.
Lou: That's what I'm saying.
Bud: You're not saying that.
Lou: I throw the ball to Naturally.
Bud: You throw it to Who!
Lou: Naturally.
Bud: Naturally. Well say it that way.
Lou: THAT'S WHAT I'M SAYING!
Bud: Now don't get excited.
Lou: Who's gettin excited!! I throw the ball to first base--
Bud: Then Who gets it.
Lou: (annoyed) HE BETTER GET IT!
Bud: That's it. All right now Take it easy.
Lou: Hrmmph.
Bud: Hrmmph.
Lou: Now I throw the ball to first base, whoever it is grabs the ball, so the guy runs to second.
Bud: Uh-huh.
Lou: Who picks up the ball and throws it to what. What throws it to I don't know. I don't know throws it back to tomorrow -- a triple play.
Bud: Yeah. It could be.
Lou: Another guy gets up and it's a long fly ball to center. Why? I don't know, he's on third, and I don't give a darn.
Bud: What did you say.
Lou: I said "I don't give a darn."
Bud: Oh, that's our shortstop!
Lou: ABBOTT!