

Michigan Law Review

Volume 59 | Issue 2

1960

E. Blythe Stason- Engineer of Administrative Law

Ashley Sellers

Member, District of Columbia Bar

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Administrative Law Commons](#), [Legal Biography Commons](#), [Legal Education Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Ashley Sellers, *E. Blythe Stason- Engineer of Administrative Law*, 59 MICH. L. REV. 191 (1960).

Available at: <https://repository.law.umich.edu/mlr/vol59/iss2/4>

This Article is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

E. BLYTHE STASON—ENGINEER OF ADMINISTRATIVE LAW

*Ashley Sellers**

THE retirement of E. Blythe Stason from the deanship of the Law School of the University of Michigan affords occasion for testimonials to him and to his work, including preeminently his enormous contribution to the improvement of both federal and state administrative law. Imposing as has been his career as the beloved and successful Dean of that superb school, his eminence among the scholars and craftsmen in administrative law was achieved before he began to occupy the Dean's chair and, God willing, he will long continue to lend his strong, skilled hands to the never-ending task of the perfection of the administrative process and the legal system within which it functions.

Dean Stason is truly one of the foremost engineers of administrative law in America. In fact, his initial professional training was in electrical engineering. Following his graduation from the famed Massachusetts Institute of Technology, he taught electrical engineering for five years, first at the University of Pennsylvania and then at the University of Michigan. But, to the loss of the engineering profession—and to the everlasting gain of the legal profession—he turned to law, graduating from the University of Michigan Law School in 1922. Even so, in technique and intellectual approach, Dean Stason has never ceased to be an engineer. The real significance of his change from the engineering to the legal profession was that, instead of devoting his tremendous energies to the utilization of the sources of power in nature to the fulfillment of human needs, he has devoted his talents to the erection of a structure of administrative law on a firm and enduring foundation.

Dean Stason's legal professional life began during a period which was characterized by the blossoming of modern administrative law.¹

* Member, District of Columbia Bar.—Ed.

¹ Looking back to this period, Dean Stason said of it: "This was the formative stage of contemporary administrative law—a dynamic period of ever changing ideas, principles, and policies, all kept from bursting traditional boundaries by the language and implications of our constitutions. A lusty youth had been born and was passing through adolescence." Stason, *Study and Research in Administrative Law*, 7 GEO. WASH. L. REV. 684, 687 (1939).

As a practitioner, teacher, interpreter, consultant, and draftsman, he has participated in every important development in administrative law which has occurred in the last four decades. Before he became a law teacher he engaged in the private practice of law in his native Sioux City, Iowa. During this period he gained an insight into the matters which were then of concern to the work-a-day mid-Western lawyer. This experience quite obviously had a marked influence upon everything he thereafter did. Dean Stason, himself, has referred to those early days of modern administrative law as its "horse and buggy stage," which he further described as follows:

"... the practicing members of the bar made their contacts with governmental administration primarily through the channel of the legal remedies available at common law and in equity for the redressing of wrongs suffered by aggrieved clients. The occasional case that drifted into the office of the practicing lawyer usually had to do with a client whose personal or property rights had been or were about to be injured by allegedly unlawful official action.

"The statutes and ordinances under which such official action took place were few in number and were drafted more with an eye to substantive results than to the administrative process itself. There were public health statutes, tax statutes (mostly imposing general property taxes), beginnings of housing legislation, statutes prescribing the powers and duties of various licensing officers, and a few others. The statutes made little, if any, effort to prescribe administrative procedure or to provide for statutory appeals to the courts. The comparatively few litigated cases were carried into the courts either by the use of the extraordinary legal writs (certiorari, mandamus, prohibition, habeas corpus) or by various means of collateral attack (injunction, suits to recover damages, suits for restitution, etc.)."²

Throughout his later professional life Dean Stason continued to evidence his concern for practicing lawyers in the representation of their clients before administrative tribunals.

When he returned to the University of Michigan as a teacher in the Law School in 1924, Dean Stason began that long and important period in his life which was to see the flowering of his talents as an interpreter and expounder of administrative law. He

² *Id.* at 685-86.

read widely and critically in the literature in that new field of law, which was developing so rapidly both in America and abroad. It is apparent that he was particularly attracted to—and was influenced by—the writings of those scholars who, like Ernst Freund, tended to be preoccupied with the means by which individual citizens could be protected against arbitrary action of administrative officials. At the same time Dean Stason was not unmindful of those who viewed the developing administrative process primarily from the standpoint of its efficacy of accomplishing more effectively governmental responsibilities resulting from the new problems of the time.

Almost from the outset of his career at the University of Michigan Dean Stason showed his active interest in the development of administrative law by his numerous writings which stand as models of conciseness and clarity.* In 1925 he first began to teach administrative law at Michigan. Three years later he had completed the initial edition of his own case book in the subject.³ In all of his writings he has achieved a unique style which, although reflecting the breadth and maturity of his scholarship, is not designed merely to mirror his erudition. Its distinctive characteristic stems from his competence in critical analysis of even the most complex problems and in setting forth his explanations and views in a manner which the general practitioner can readily comprehend. He is particularly gifted in his ability to summarize with precision and cogency.

The worth of Dean Stason's labors in the field of administrative law, however, is not only to be found in the fact that he realized at an early date the significance of its development in this country, or that he began to teach and to write about it in a scholarly and understanding style. Of even greater importance is that he also became convinced that he personally could be instrumental in shaping and molding the character, the form and direction of this growing body of law. In time he became a working member of the Attorney General's Committee on Administrative Procedure, which in 1941 issued its landmark report.⁴ This report had a

* See list of publications, pp. 185-190 *supra*.

³ STASON, *CASES CONCERNING ADMINISTRATIVE TRIBUNALS* (1st ed., 2 vols., 1928; rev. ed. 1932). An entirely new and more comprehensive case book by Dean Stason was first published in 1937: STASON, *THE LAW OF ADMINISTRATIVE TRIBUNALS* (1937; 1st rev. ed. 1947; 2d rev. ed., with F. E. Cooper, 1957).

⁴ ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE 214, 215 (Final Report 1941).

profound influence upon all further developments in the field of administrative law. Dean Stason was one of the three members of the Attorney General's Committee which filed a minority report suggesting reforms in the law which later were adopted in substantial measure in the passage of the Federal Administrative Procedure Act in 1946.

Dean Stason also became a consultant to the President's Conference on Administrative Procedure, which issued its invaluable report in 1953. Dean Stason next served as a member of the Task Force on Legal Services and Procedure of the Second Hoover Commission which, in 1955, issued a report calling for further major reforms in the field of administrative law. In this significant undertaking, he was a chief participant, and, among other important contributions, supported the proposal for a Code of Administrative Procedure.

Dean Stason had long been active in the Administrative Law Section of the American Bar Association, and when the Association, prompted by the proposals of the Second Hoover Commission respecting legal services and procedure, undertook to prepare a comprehensive code of administrative procedure to replace the Federal Administrative Procedure Act, Dean Stason, as chairman of a special committee of the Section of Administrative Law of the Association, personally was primarily responsible for the preparation of a draft of a proposed code which is now pending before the Congress and which, if enacted, would respond to the need for revision of its pioneer statutory predecessor.

Dean Stason has never been one who regarded the administrative process as beyond need of further improvement. As early as 1939 he said: "If the administrative process, which, as of 1939, is a rather crude governmental device, is to become a satisfactory part of our governmental scheme there is much refining to be done."⁵

Several years later, in commenting upon developments in the field of administrative law as of 1946, Dean Stason again made reference to the importance of further refinement of the administrative process. He stated:

" . . . it may be said that the five-year period, including the years of World War II, have witnessed two important progressive changes in administrative law, first, the embryonic

⁵ Stason, *Study and Research in Administrative Law*, 7 *GEO. WASH. L. REV.* 684, 701 (1939).

beginnings of some notable statutory reforms of administrative procedure, and second, a further refining of the administrative process through the case by case impact of judicial decision. Notwithstanding the conflicting interests of the war years, we have witnessed a gradual assimilation of the administrative process into somewhat uncongenial constitutional framework."⁶

Since making these comments Dean Stason has demonstrated by his work as a consultant to the President's Conference on Administrative Procedure, as a member of the Task Force on Legal Services and Procedure of the Second Hoover Commission, and as a participant on various drafting committees of the American Bar Association that, in his opinion, the process of improvement and perfection of the structure of administrative law is not yet complete.⁷ Realizing that the administrative process is a fundamental part of our governmental system, Dean Stason has shown both by his words and actions that he deems the real friends of administrative law to be those who would teach and expound its doctrines and who would, at the same time, give intelligent direction to its development so as to accommodate it within our constitutional framework. He has said:

"In the United States, in sharp contrast with practice in Great Britain, and, indeed, with that in most continental countries, we have committed ourselves to judicial control of administration and administrative agencies. It is an accepted part of our constitutional theory of distribution of powers. We look to the judiciary for protection of rights and liberties—for protection against the hazards of uncontrolled bureaucracy."⁸

In commenting upon the criticism leveled at courts in their review of the administrative process, Dean Stason has called attention to the fact that we live in the midst of a dynamic program of world change and social reform, but he has rejected the notion that courts stand in the way of needed social and political progress. He has said:

⁶ Stason, *Administrative Law — Developments: 1940-1945*, 44 MICH. L. REV. 797, 809-10 (1946).

⁷ Cf. as to law generally: "Thus the legal order must be flexible as well as stable. It must be overhauled continually and refitted continually to the changes in the social life which it is to govern." POUND, *LAW FINDING THROUGH EXPERIENCE AND REASON* 23 (1960).

⁸ Foreword by E. Blythe Stason, COOPER, *ADMINISTRATIVE AGENCIES AND THE COURTS* (1951).

“ . . . The Courts will in the long run occupy a position of equality and independence, exemplifying the supremacy of the law in an orderly and balanced polity. Indeed, this must happen if the country is to remain free. So, in thinking of judicial review of administrative decisions, it is wise to regard it as a most important feature of the theory of checks and balances in our juristic and governmental scheme—a substantial part of the swinging pendulum. We must continually ask ourselves what is the proper degree of judicial review if a wise balance is to be maintained. That should be our guiding star.”⁹

Despite the intensity of his preoccupation with the development of federal administrative law, Dean Stason concurrently has been in the forefront of those who have labored to give system and order to its counterpart in the law of the several states. As Chairman of the American Bar Association’s Special Committee on the Model State Administrative Procedure Act and as an assiduous participant in the deliberations of the National Conference of Commissioners on Uniform State Laws he was largely instrumental in the formulation and publication of the model statute and has urged its adoption in the various states. While he readily conceded that it was not “suitable for immediate and verbatim adoption in each of the forty-eight states,” he asserted: “Nevertheless the general principles set forth in the model act are of universal applicability and they should find their way into all state legislation on administrative procedure.”¹⁰

It would be impossible within the present limitations of space to record adequately all of Dean Stason’s accomplishments in the field of federal and state administrative law. Enough has been said to show that he has been active in every important movement for its reform. No mere list of accomplishments, however, would reveal the true measure of the worth of Dean Stason. Only those who have been privileged to know and to work intimately with him can fully appreciate the nature of the man and the scope of his abilities. Few scholars in the field of law could or would do what Dean Stason has done, namely, participate in the tedious processes of drafting and of attending or conducting lengthy conferences for the purpose of compromising differences and developing workable plans which would be responsive to all legitimate

⁹ Foreword by E. Blythe Stason, UHLER, *REVIEW OF ADMINISTRATIVE ACTS* (1942).

¹⁰ Stason, *Model Administrative Procedure Act*, 33 *IOWA L. REV.* 196, 209 (1948).

interests. Not only has he served as a guiding spirit in the formulation of policies and principles, but he has never eschewed the role of toiler and laborer in the vineyard. His readiness and ability to assume an active role in the formulation of sound principles and plans and to persevere to place the plans into practical operation have won for him the admiration of all who know and have known him. It is this same characteristic which creates, in my mind, the image of the great engineer of the law—the man whose learning and imagination enable him to grasp the entire dimensions of the job to be done and the man who, in the tin hat, is then willing and able to shoulder the responsibility for seeing that the task is accomplished.¹¹

Those familiar with Dean Stason's work in the field of administrative law know that he has pioneered in focusing attention not only on the constitutional aspects of administrative law, but also on the practical functioning of the administrative mechanism. He early realized that it was necessary for the Congress and the state legislatures to enact legislation, such as the Federal Administrative Procedure Act and the state administrative procedure acts, to serve as a guiding influence on administrative activities. A great deal of Dean Stason's personal philosophy regarding administrative law appears in the following portions of the minority report of the Attorney General's Committee:

“In some quarters there is a fear of unduly hampering the freedom of action of administrative agencies, and a conviction that it is either impossible or unwise to provide by legislation for the great variety of administrative subjects and processes. The answer, we think, is to identify the few basic considerations and express them in legislative statements of policy, of principles, or of standards for the guidance of administrators, subject always to reasonable variation to meet varying needs. Modern legislation, by which the most intimate and vital interests of society are governed, is cast for the better part in similar terms. To say that man can be so governed, but that the agents of the state cannot or should not be so governed, is a recognition of rejected forms of government. To govern the courts by weighty tradition, a bulky ‘Judicial Code,’ and

¹¹ True to form, Dean Stason is now on the job site once more, absorbed in the process of perfecting and securing approval (in this instance the approval of the National Conference of Commissioners on Uniform State Laws) of a revision of the Model State Administrative Procedure Act.

uniform rules of practice but to give administrators only slight statutory attention is at least questionable in a democracy."¹²

It would be meaningless to attempt to label a man of Dean Stason's stature either a conservative or a liberal. It will suffice to say that he has always stood at the outer rampart in the field of administrative law and has, when the occasion demanded, led the advance of knowledge by pointing out the path to be followed. I have no doubt that he will continue to do this in his new role as Administrator of the American Bar Foundation.

¹² ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE, pp. 214-15 (Final Report 1941).