

Administrative Law  
Fall 2005 - Richards

Answer Key

These suggested answers include the basic issues posed by the question. The answers were graded on clarity and organization as well as the basic issues. The exams were good overall and bottom exams were at the upper end of the grading recommendations.

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1) Federal grants for medical research are very competitive. Scientists requesting federal grant money must submit a detailed proposal, including previous work in the area, a detailed description of the work they are seeking funds to support, and an explanation of why the work is important. The grant request is submitted to the National Institute of Health, a federal agency. Some of these are funded, and many are not. All grants are kept on file at the agency. Your client submitted a request for funds to support research on a new drug for diabetes. The proposal was not funded by the government and the scientist sought funding from a private drug company. The drug company will fund the project but they want the patent rights. They also want to prevent access to the federal grant information because it would give competitors an advantage to know the direction of its work. Your client has asked you two related questions:

A. Can a competitor get a copy of the grant from the NIH?

*This should be a simple discussion of the FOIA process:*

*If the government has the information, then it is subject to release through FOIA unless covered by an exemption or another law. There are no restrictions on who may request information or for what purpose, so the competitor is with the class of persons who may use FOIA. The only information available will be that held by the government - the Shelby Amendments do not apply to the researcher's side because he did not receive any funding. This grant proposal may be covered by Exemption 4, which deals with confidential or trade secret information. There is an open question whether this is freely given information, which the government must be more careful to protect, or mandated (in return for a chance at funding), which the government has more latitude to release.*

B. If the government can release the grant, how can he stop them?

*If the information is not covered by an exemption, there is nothing that can be done to stop the release. If the information is covered by an exemption, the government may still release it unless it is covered by another law. The scientist is the one who should be contesting the release since it is his information. He can try to convince the agency that the info is covered by the exemption, and that as a matter of policy, the federal grant process cannot function if scientists have to worry about their research data being compromised. He should also argue that the data is covered by other laws, with the best being that it is trade secret. As a trade secret he can ask the court to prevent the agency from acting illegally under the general provisions of the APA (702), with the illegal act*

*being the release of the data. The Chrysler case would be an example of an attempt at a reverse FOIA attempt.*

Address both points in your answer. Be specific about the APA sections you would use. Computer users have 300 words.

2. The Wooley case is an important constitutional law case in Louisiana administrative law.

A. Explain why LA SC rejected the provision of the LA statute that makes the ruling of an administrative law judge binding on the agency. Draw parallels with United States Supreme Court cases as applicable. Computer users have 400 words.

*The key is that the court rejected the legislative intent, finding it unconstitutional, but did not reject the statute. It was able to do this by interpreting the words to mean something else than the legislature meant. The issue was whether ALJs can issue final orders, meaning orders that bind the agency, without the ratification of the agency secretary. The court rejected the approach of the district court, which focused on the physical indicia of being a judge, and looked at the jurisprudential meaning of a final order. The SC focused on the notion of a final order as enforceable. If the agency does not support the order, then the only way that it can be enforced is if the ALJ can issue an enforcement order, since ALJs cannot go into the courts and seek judicial enforcement, as the agency can. But issuing enforcement orders is reserved to judges in LA, and the ALJs do not meet the statutory requirements for judges. Thus the court reasoned that the legislature could not have intended ALJs to issue final orders, since that would unconstitutionally make them judges. The result of this circular definition is that the SC read the finality provision out of the law, leaving a party with a valid ALJ decision that goes against the agency is an impossible position: does the party rely on the ALJ decision and risk a judicial enforcement action brought by the agency?*

B. What must the legislature do if it wants to make these decisions binding? (30 words.)

*It can propose a constitutional amendment modifying the LA separation of powers. What it cannot do is fix this by passing another law.*

C: What are the policy implications of making the ALJ's decision binding on the agency? (150 words)

*Agencies will choose to avoid the ALJ process when possible and go directly to the courts. This will increase the cost of regulations, both for the state and the regulated parties. When this is not possible, the agency will seek to settle cases outside of the ALJ process.*

3) Explain how a lawsuit against the Army Corp of Engineers will be different for the folks flooded by the 17th street canal and those flooded by the levee problems in the 9th Ward. 200 words.

*Lawsuits against the Corp for flood damage must be brought under the Federal Tort Claims Act (FTCA). The FTCA allows recovery for negligence by the government, but is subject to the discretionary function defense, i.e., if the Corp can show that the levees were built as intended, and the design was based weighing the risk against the costs, or was in response to congressional direction, they will not be liable even if the levees were inadequate. If the lawsuit is from flood damage from a flood control project, there is additional legal protection under the Flood Control Act of 1928 (FCA), which provides complete immunity for the Corp, even if it was negligent. The 17th Street Canal is a flood control project and thus the FCA would apply. The 9th Ward was flooded by breaks in navigation canals, and under the SC precedent in Gracie, the FCA would not apply. [NB - if you forgot which canal was covered by the FCA, the Industrial Canal was discussed in this case.]*

4) Assume that Congress has passed the Natural Disaster Hazard Remediation Act (NDHRA), which gives the EPA the right to condemn property and prevent rebuilding if the property is so contaminated that it would be unsafe to live there. Under this law the EPA has condemned the 9th Ward and ruled that the property cannot be rebuilt and used for businesses or residences. This destroys the value of the property and the owner wants to sue the EPA. What does the EPA owe them and why? What cases control? Assume that the only law to apply is the cases we read and the NDHRA, and that it is silent on compensation. (150 words)

**[NB - many students got distracted and discussed due process only . Your clients do not really care what sort of hearing they get, the real issue for them is whether they get compensation.]**

*The key is whether this is a takings case, where the residents should get compensated for the value of the land, or a nuisance/hazard abatement case, where they get no compensation because the property has lost its value because of the contamination.(North American) They would be entitled to hearing to allow them to contest the factual basis of the condemnation (Londoner) but not the validity of the rule (Bimetallic). If they retain ownership of the property, but cannot use it because it is too dangerous, it is not a taking and they do not get paid. If the land is taken for public use (parks or the like), they should get paid, but only at the diminished value. They may seek compensation through legislation.*

5. What is the due process standard in Goldberg v. Kelly and how was this modified by Mathews v. Eldridge? (175 words)

*Goldberg established that a government benefit was not a gift which could be withdrawn at will, but a form of property, which triggered due process rights. Key among these rights was a right to a hearing before the benefit was terminated. This hearing had to be tailored to the needs of the beneficiaries, and since those receiving welfare would not have lawyer and would not be able to present written testimony, they were entitled to an oral hearing and to orally present evidence and cross-examine witnesses. Matthews limited Goldberg to its facts, finding that while other benefits, such as disability payments, were also a type of property, they did not mandate pre-termination hearings,*

*and that written proceedings could be used if oral testimony would not materially improve the decisionmaking.*

6. Your client owns a small oyster bar and restaurant. She keeps her desk where she does the restaurant's paper work in the back of the kitchen because there is not enough room for a separate office. The restaurant inspector demanded to see what was in the desk drawers because he said anything in the kitchen could potentially contaminate the food and he had to be sure there were no prohibited substances in the desk. She objected, but when he threatened to close the restaurant, she opened the drawers. The inspector found an illegal sawed off shotgun the owner uses for protection. She is now being prosecuted for possession of an illegal weapon. Is this a proper search whose evidence should be admitted in a criminal trial? Discuss both sides of the issue. (400 words)

*Background - is this a legal search of any kind?*

*Restaurants are pervasively regulated businesses. They are subject to search at unannounced times because this is necessary to protect the public from unsanitary food. The license to operate the restaurant puts the owner on notice of the search requirements and that the penalty for failing to comply is closure. It is not improperly coercive to remind the owner of this penalty to persuade her to comply with the search. The desk is in the kitchen and should be subject to search because it is in the food preparation area. On its face, this is a proper administrative search.*

*Exclusion of evidence*

*The food service license put the owner on notice of searches related to violations of the food sanitation code, and her consent to search was limited to this expectation. While she specifically consented to the extension of the search under threat of closure, this consent was also limited to expected range of the search defined under the food handling license: items that violated the food sanitation code. The gun has no relation to food sanitation and is not addressed by the food inspection code. If it threatens food sanitation, the appropriate penalty would be an administrative sanction, not criminal prosecution. Criminal prosecution for evidence unrelated to the purpose of the administrative search requires a court issued probable cause warrant, which was not present in this case. The inspector cannot use the silver platter doctrine to give the evidence to the police, because his legal authority to be in the desk depended on his status as a government agent.*

*Admission of the evidence*

*Since the underlying administrative search was valid, the inspector had the right to look in the desk drawers without a 4th Amendment probable cause warrant. The inspector has a right as a private citizen to turn this evidence over to the police. As long as the police did not instigate the investigation and the inspector is not otherwise an agent of the police, the 4th amendment is not implicated. As an alternative theory, the owner was on notice that the premises was subject to inspection and this eliminated the expectation of privacy. She should have known that the kitchen was not a good place to keep an*

*illegal weapon and cannot complain about the mechanism that brought the weapon to attention of the police. If she needed protection, she could have kept a legal shotgun without violating the law.*