# Administrative Law - Richards

# Study Guide – Chapter 2

# Learning Objectives

## Learn why agencies are seen as hybrids of all three branches of government.

## Learn what the Delegation/Nondelegation Doctrine fight was about.

## Learn the standard that the Court adopted to analyze Delegation Doctrine questions.

## Learn how the court now analyzes the delegation question and handling statutes that do not properly delegate authority.

## Learn how much judicial power can be delegated to agencies

## Learn the source of the President’s domestic powers.

## Learn the requirements of the Appointments Clause.

## Learn the difference between principal and inferior officers.

## Learn the basic rule for removing appointees.

## Learn how limiting the power of the president to remove appointees leads to independent agencies.

## Learn why independent agencies are seen as the headless 4th branch of government.

## Learn how to determine how Congress can control an agency.

## Learn to distinguish proper Congressional oversight from unconstitutional control of an executive branch.

## Learn about the Great Compromise and how is it embodied in the legislative process.

## Learn when the House and Senate can act without presentment to the president.

## Learn what an earmark is and how they fit into the legislative process.

## Learn the power and limits of executive orders.

## Learn the basic structure of regulatory review through executive orders.

## Learn the basic statutory structure for general regulatory review.

# Evaluation Questions

## Why didn’t the drafters of U. S. Constitution feel the need to lay out clear guidelines for large federal governmental system?

### Where did government happen in the early constitutional period?

### When did the federal government become a major source of regulation?

## What is the modern test for whether the delegation of power to an agency has been properly done?

### How is this test applied by the courts?

### How would you apply this test to a rulemaking?

### How would you apply this test to an adjudication?

### (You will not be able to fully answer these questions until you know more about both processes.)

### If the statute delegating the power to the agency is general - “protect us from dangerous diseases” - what can the court look to in deciding if there is enough background to review the agency’s actions?

### If the court cannot find enough evidence of congressional intent, does the court treat it as an unconstitutional delegation or is there now another solution?

## May Congress delegate the power to adjudicate criminal penalties to agencies?

### Why are criminal penalties limited to Article III courts?

### If a city wants to have traffic tickets adjudicated by an ALJ, rather than a municipal judge, how must the city change the penalties?

### What rights will the defendant lose when a criminal matter is transformed to an administrative review?

#### (You will need to know more about adjudications to answer this question.)

## What is the key factor that determines whether an agency must be in the executive branch?

### What is an example of an agency that is controlled by Congress?

### What powers can a Congressional agency exercise?

## The Structure of Congress

### What was the Great Compromise between the large and small states that lead to the organization of the Congress?

### How was this compromise intended to affect the politics of the two bodies?

#### How were Senate members initially chosen?

#### How did changing to direct election of Senators change the interests Senators represent?

### What are bicameralism and presentment?

### Why is bicameralism critical to the Great Compromise?

### What are the president's options on vetoing legislation and how may congress override a veto?

### What are the exclusive powers of the House of Representatives?

### What are the exclusive powers of the Senate?

### How do the two branches work together in an impeachment proceeding?

### What is the only joint power?

## What is the congressional power over agencies, i.e., how are agencies formed, where do they get their legal powers, and how are they financed?

## Earmarks

### What is an earmark?

### How does an earmark different from an approbation bill?

### Can an earmark be enforced in court if the agency does not follow it?

#### Why not?

#### Who legally directs the spending of an earmark?

## Presidential power

### How do the Vesting and Take Care Clauses create the core of the president's domestic powers?

### How are appointments used to control agencies?

### What was the appointments clause problem in *Buckley v. Valeo*?

## What is the unitary executive theory?

### How does this theory affect the relationship between the president and agency heads?

### Why does the advice and consent provision in the constitution argue against the unitary executive theory?

### Why would the unitary executive theory increase the gulf between cabinet level agencies and independent agencies?

## Who are principal officers of the U.S.?

### How are they appointed?

### How can they be removed?

### What is a recess appointment?

### How has the Senate tried to prevent recess appointments?

## Who is an inferior officer of the U.S., as opposed to an officer of the U.S.?

### Who may appoint inferior officers?

### What is the appointments process for inferior officers?

### What does the Lucia case tell us about differentiating mere employees from inferior officers?

### What is the effect of an improper appointment on the actions of an ALJ?

## In *Morrison v. Olson, 487 US 654 (1988)*, what was the attack on the independent counsel law?

### Who appoints the independent counsel?

### How did the court argue that the president retained enough control to allow the independent counsel law to stand?

### Why is the independent counsel law inherently in conflict with the notion of presidential control?

### What governs the appointment of special counsels today?

### What is the process for removal and how could a president remove a special counsel?

## Removal

### If Congress says an officer can only be removed for good cause, but does not set a term of office, how do the courts treat the president’s right of removal?

### What is the basic rule for who can remove principal and inferior officers of the U.S. who do not have a term of office?

#### What if the statute says an officer serves until removed for good cause, but does not specify a term of office?

## Independent Agencies

### How did *Humphrey's Executor* lead to independent agencies?

### What are some examples of independent agencies?

### What is the policy reason for having independent agencies?

### How do they challenge the theory of separation of powers?

### Why are independent agencies called the headless 4th branch of government?

### Which branch of government are independent agencies in?

### Why are independent agencies usually headed by commissions rather than individuals?

#### How are the terms of the members of a commission usually structured?

### When a new president is elected, can he replace his cabinet secretaries?

### Can he replace the commissioners of independent agencies?

### When can the president remove the head of an independent agency?

## Executive Orders

### What is an executive order?

### What are the limits on an executive order, i.e., what can the president do by executive order without legislation by Congress?

## What is a line-item veto?

### Why was a line-item veto unnecessary in the founders’ vision of the operation of federal budget?

### Why do modern budget bills make this vision obsolete?

### What separation of powers issues does a line item veto raise?

### Did the Court allow a line item veto in *Clinton v. City of New York*, 524 U.S. 417 (1998)?