Administrative Law
Fall 2010 - Richards

Put your exam number on each page of the examination if you are handwriting the exam. Do not put your name or any other identifying information on the examination. Read the entire exam before answering any questions. Make sure you have all the pages and that they are all different. Use no more than the space provided. **Do not write answers on the back**. You may use the back for scratch paper. If you are using the computer, each question has a **175**-word limit. These are short answer questions, but not one-sentence answer questions. Read the question carefully and think about your answer before you start writing. **If you use the computer, make sure you number your answers to match the question numbers.**

1.   In *Chamber of Commerce v. U.S. Dept. of Labor*, 174 F.3d 206 (D.C. Cir. 1999), how did OSHA try to "persuade" businesses to comply with guidelines that it did not have the political will to make into rules? Why did the court find this impermissible?

Do not write below this line

2.   Thinking about *Matthews v. Eldridge* and how administrative law due process standards and triggers are different from due process in criminal law cases, how would a lawyer for Homeland Security justify holding detainees at *Guantanamo* using administrative law theory? (Hint - what is the key distinction between administrative law and criminal law?)

3.   How do the decisions in Wooley and Bonvillian II affect the ability of agencies under the Central Panel of ALJs to make policy through adjudications? How does this undermine a key function of agencies as compared to resolving disputes through court decisions?

4.   What are the standards for the two immunity defenses under 42 USC 1983 and who gets them?

5.   What is the process to make a claim under the Federal Tort Claims Act, when can you go to court, and what is the legal result if you do not comply with this - i.e., what legal part of your case fails?

6.   In *Morrison v. Olson, 487 US 654 (1988)*, what was the separation of powers attack on the independent counsel law and how did the court resolve it?

7.   What is the unitary executive and how does this theory view the authority of the president to make agency decisions versus the authority of the agency heads (ignore independent agencies)?

8.   Assume that the physician members of a medical licensing board use their own expertise to determine that the physician whose license they are reviewing was engaging in substandard practice. What due process problems does this create and what should the board members have to put in the record to cure this?

9.   What different things do Roth and Sinderman tell us about the due process rights of public employees when their employment is terminated?

10.   Explain the procedural rights established in *Goldberg v. Kelly* and how they differ from the rights given indigent criminal defendants.

11.   How did the Welfare Reform Act of 1996 eliminate welfare as an entitlement? Why did this fundamentally change the welfare system?

12.   How are the legal standards for initial licensing different from a license review or revocation? (Why does this mean that law students better stay out of trouble until after they get their license?)

13.   Using bad dogs as an example, what are the enforcement advantages of requiring a license as compared to allowing the activity until the agency can show that the party is violating the law?

14.   Using the BP oil spill as an example, explain how using the precautionary principle would give a different regulatory response to oil drilling than using cost benefit analysis?

15.   What was the standard in *NLRB v. Hearst Publications*? How did the case differ from *Skidmore*?