

UNIVERSITY OF MARYLAND
SCHOOL OF LAW

ADMINISTRATIVE LAW

(3- ½ hours)

Mr. Dash

No. _____ Name: _____

INSTRUCTIONS: Sign your name in the blank above. Put the number found above on each of your blue books on the outside cover. Do not put your name on or in the blue books at any place. Return the questions when you turn in your blue books.

I
(35 points)

The United States Secretary of Defense is empowered by Congress to authorize the building of facilities to test new weapons. The statute includes a provision that the Secretary must consider the safety and well being of nearby civilian residents prior to authorizing the building of such testing facilities.

The Secretary has delegated to the Advance Research Agency, a subdivision of the Defense Department, the authority to build testing facilities when needed.

The Advance Research Agency plans to build a new facility to test artillery weapons about ten miles from a community of 5,000 people in Arizona. At the news of the proposed new facility the townspeople are either indifferent or in favor of the proposal. However, in the town is a small college, and the students, at the college, are opposed to the proposal. The college student association files a protest with the Department of Defense and requests a hearing, in the local area on the proposal. The Department of Defense denies their request. The student association then files a complaint in the local federal District Court.

The Student Association alleges:

1. That the Secretary of Defense must be the one to authorize a facility, not a subdivision of the Department.
2. That the Secretary must hold a formal adversary hearing on the record to ascertain whether the facility is dangerous to local residents, and whether the welfare of the local inhabitants will be adversely affected by the noise and activity of the facility.
3. That the Secretary must make findings of fact to support any decision.

The Student Association requests the court to:

1. Hold a trial De Novo, on the issue of the safety and welfare of the local community.

2. Make findings of fact and resolve the issue based on the courts determination of the fact.

3. Enjoin the agency from proceeding with the construction of the facility pending the determination of the court.

The Government answers with a motion for summary judgement alleging that the Student Association has no standing to raise the issue, and that in any case the decision is within the general discretion of the agency, and not reviewable by the courts.

The Federal District Court grants the Government's motion of summary judgement, and the court of appeals affirms. The Student Association is granted certiorari in the Supreme Court. Write what you believe would be the opinion of the Supreme Court covering all issues in the case.

II (25 points)

State X has established a state wide Zoning Board charged with the responsibility of regulation all aspects of commercial and private housing construction in the state.

The Board, because of possible power shortages in Delta County, issues a rule forbidding any construction in that county for three years. The rule would also prohibit any, additions to existing commercial buildings, private homes, and farms.

State X has a limited administrative Procedure Act, which has no provisions for rule making. The Act does provide that in any adjudication an aggrieved party shall have a formal adversary hearing with appropriate Judicial Review.

Three separate groups in the county file a complaint in the state court claiming a right to a hearing as aggrieved parties.

Group A is composed of homeowners who allege they represent the 30,000 homeowners of the county, who as a result of the Board's edict are prevented from making necessary improvements on their Property.

Group B is composed of farmers who alleged they represent the 4,000 farmers in the county, who as a result of the Board's edict, can not make necessary improvements on their farms, resulting in an adverse affect on their incomes.

Group C is composed of ten construction companies, which are all the companies in the county, who allege that as a result of the Board's edict they will be put out of business.

The Board files a motion for summary judgment against all three suits, alleging none of

the plaintiffs have a right to a hearing. The Board also alleges that the A.P.A. provides for no Judicial Review of Agency rulings, nor does the statute setting up the Board provide for any Judicial Review; therefore the Court cannot review the agencies' ruling.

Write what you believe would be the Court's opinion for each of the three cases.

III
(20 points)

Mr. Sad Sack has been a minor clerk in the Department of Motor Vehicles of the State of Y for over ten years. He receives a notice from the State Civil Service Agency stating that they have evidence reflecting on his honesty in handling state funds. Specifically he is charged with misapplication of certain license fees received by his office. Mr. Sack is advised that he can submit in writing, within 30 days of date of the notice, anything he wishes in his defense. Mr. Sack writes to the Civil Service Agency denying any wrong doing on his part, and demands to know what is the basis of the charge. Shortly thereafter he is notified of his dismissal "for cause" from state employment.

Mr. Sad Sack comes to you for help. You find out from the State's Attorney's office that Mr. Sack is not going to be criminally prosecuted for embezzlement of State funds.

The state law on civil service employment provides that the Civil Service Agency may dismiss any state employee for cause, after the employee has had an opportunity to reply to the charges. The law further provides that the Civil Service Agency may use confidential information in reaching its decisions, which it need not to disclose. The statute specifically states that there shall not be judicial review of a determination by the agency to discharge a state employee.

What would you argue, in defense of Mr. Sack, before the State Court; and what do you believe would be the court's response?

Assuming the state courts found no right to Judicial Review what other recourse do you have?

IV
(20 points)

Briefly explain or answer the following:

- A. Primary Jurisdiction
- B. Substantial Evidence Review
- C. Jurisdictional Fact

- D. How valid is the statement that;
Res Judicata and Stare Decisis do not apply to administrative agencies.
- E. What problems is a lawyer confronted with when his client is served with an administrative subpoena for books and records; and the client does not want to comply.