

EXAM NUMBER _____

UNIVERSITY OF LA VERNE COLLEGE OF LAW

Course Name:	Administrative Law	Instructor's Name:	Doskow
Semester/Year:	Spring 2004	Date of Exam:	May 8, 2004
NO OF QUESTIONS	2 essay		
NO. OF PAGES	4		
LENGTH OF EXAM	2 hours		

DO NOT TURN BEYOND THIS COVER UNTIL INSTRUCTED TO DO SO BY PROCTOR.

Be sure your exam number is entered on this sheet and all of your bluebooks.
Do not put your name on any materials.

No writing or typing will be permitted after time is called.

Reminder: Do not take any examination questions, answers or materials out of this room unless instructed to do so. If you have questions concerning a possible error in the exam, see the proctor or go to the registrar's office, but leave your exam papers covered on your desk.

At the end of the exam, please put all materials together inside of one bluebook before you turn it in to the proctor.

SPECIAL INSTRUCTIONS: See first page of exam for directions.

IMPORTANT: Write on only one side of page in your bluebooks.

MATERIALS THAT MAY BE USED DURING THE EXAM ARE: None.

**UNIVERSITY OF LA VERNE
COLLEGE OF LAW**

ADMINISTRATIVE LAW

EXAMINATION

May 8, 2004

Dean Doskow

1. This two-hour examination consists of two questions, which will be weighted equally. Part B of Question II will be given less weight than Part A.

2. Assume that the Administrative Procedure Act, in the form distributed in class, is in effect in the United States, and that a state version is in effect in each state mentioned.

3. Your discussion of issues raised may be concise, as long as the important aspects of each issue are addressed.

WATCH YOUR TIME

Good Luck!

Helen Hawkeye was a case worker in the State of Langdell Department of Social Services (DSS) for 17 years. She serviced a normal caseload of welfare families. During her tenure she received annual reviews of her work, most of which rated her performance as "average."

On October 1 the Langdell City Daily Bugle published an article about a welfare family, the Kallikaks. The parents had never enrolled any of their seven children in public (or any other) school, nor as far as could be determined, had they provided even rudimentary at home education. The story gained wide circulation; criticism of the DSS was intense.

The Kallikaks were one of Helen's cases. Her reports contained no reference to the children's lack of education. Education is not normally one of the aspects of welfare family life which the DSS investigates. Its Procedures Manual is written in general terms of "family welfare" and emphasizes caseworker scrutiny of the financial aspects of welfare grants.

The law under which the DSS operates provides that a caseworker, once past the six month probationary period, can be terminated for (among other causes) "neglect of duty" or "any action bringing the Department into disrepute."

Helen's supervisor informed her on Friday, October 8, that her employment was terminated, effective that day. She received a check for statutory termination pay and accrued vacation.

The regulations of the DSS provide that an employee disciplined or terminated has the right to a hearing to contest the DSS action within 90 days after being notified of discipline or termination. At that hearing the employee's supervisor presides, the employee is informed of the reasons for the action, and DSS representatives and the employee may testify.

A hearing was held on November 15, at which the declaration of a DSS representative reciting the facts in the first three paragraphs above was introduced and read. Helen cited her years of experience and the DSS manual in her unsworn testimony. The supervisor, presiding, upheld the termination in a letter saying only "The decision to terminate is affirmed."

The DSS regulations provide that the decision of the supervisor is final, and not subject to judicial review.

Helen intends to contest the DSS determination. Advise her of the contentions that should be asserted on her behalf.

II

The Federal Endangered Species Act provides, in part:

1. The Secretary [of the Interior] shall by regulation promulgated in accordance with this Act and the Administrative Procedure Act determine whether any species is an endangered or threatened species because of any of the following factors:
 - (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
 - (B) overutilization for commercial, recreational, scientific or educational purposes;
 - (C) disease or predation;
 - (D) the inadequacy of existing regulatory mechanisms; or
 - (E) other natural or manmade factors affecting its continued existence.
2. The Secretary shall make determinations as required by Section 1 solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species, and obtaining input from interested parties and the public. Regulations shall be issued in proposed form for such comment prior being issued as final regulations.
3. [The Act describes the detailed information the Secretary shall collect and consider. It contains no requirement that a hearing be held.]
4. Whenever any species is listed as endangered, the Secretary by regulation may prohibit or impose restrictions on [activities are listed, including residential development] in the species' habitat.

The Secretary has issued a regulation designating the Squantum Wren as endangered, after issuing a proposed regulation, receiving comments, and making detailed findings. The regulation would impose significant costs on real estate developers. The Squantum Wren is a small bird the habitat of which is two California counties, both of which are in the midst of major residential development.

Three major home developers owning land in the affected area consult you with respect to a judicial challenge to the regulation.

A. Discuss the legal principles which should guide their decision whether to bring such litigation.

Question II
Continues

The Friends of Birds (Friends) two years ago submitted a request to the Secretary to issue a regulation classifying Kasprzak's Plover as an endangered species, with detailed documentation of the kind required by Section 3 of the Act. The Friends' requests for information have resulted only in a reply from the Department that "No action has been taken on your request."

The Friends bring action in the U. S. District Court for the District of Columbia to compel the Secretary to give notice of a hearing to consider the issuance of a regulation protecting Kasprzak's Plover.

B. Discuss and decide the likelihood of success of the action.