

EXAM NUMBER

439

UNIVERSITY OF LA VERNE COLLEGE OF LAW

Course Name: Administrative Law

Instructors' Names: Professor Duskow

Semester/Year: Fall 2005

Date of Exam: December 10, 2005

NO OF QUESTIONS 1 fact pattern and 3 questions

NO. OF PAGES 4

LENGTH OF EXAM 2 ½ 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 bluebooks in which you write. 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.

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: None**

**MATERIALS THAT MAY BE USED DURING THE EXAM ARE: Copy of Administrative Procedure Act, in the form distributed to the class.**

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

★★★★★ADMINISTRATIVE LAW★★★★★

EXAMINATION

Dean Doskow

December 10, 2005

1. This is a two hour examination, closed book except for for a copy of the Administrative Procedure Act, in the form distributed to the class. The copy must have no notes added to it, but may be highlighted or underlined.

2. The examination consists of one fact pattern, and questions based on it. Answers to Part A will count for 2/3 of the grade, answers to Parts B and C combined for 1/3.

3. If you believe your answer requires facts not given, you may assume specific, limited facts, but you must state your assumptions.

4. If writing by hand:

- Write on only one side of each blue book page
- Number blue books
- Write exam number on each blue book
- Write legibly; double spacing is preferred.

5. Read the question carefully, and pay particular attention to the call of the question. Take time to think about and outline your answers. Conclusory answers, without adequate analysis generally receive little credit.

6. Remember that the prime focus is the application of the law to the facts of the question. Recitation of law without facts should be kept to the minimum necessary to introduce discussion of the facts.

★★★★★ WATCH YOUR TIME!★★★★★

## FINAL EXAMINATION QUESTION

The National Traffic and Motor Vehicle Safety Act ("Act") directs the Secretary of Transportation to "issue motor vehicle safety standards which will improve highway safety."

The Act authorizes judicial review under APA 706 of all actions relating to standards.

*Scope  
tech.* The Secretary has issued internal rules requiring that in rulemaking consideration be given to (1) relevant available safety data, (2) whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle, and (3) the extent to which the standards will contribute to carrying out the purpose of the Act. The rules provide that the views of the automobile manufacturing industry "shall be given great weight."

There are presently in effect standards adopted fifteen to twenty years ago requiring seat belts and air bags in most vehicles. The Secretary now proposes to require that all vehicles be equipped with a feature popularly known as the "Ratlight." The Ratlight will show whether or not all passengers are wearing their seat belts. If not all passengers are wearing their belts, small but visible exterior red lights will illuminate under the left headlight and left taillight, enabling law enforcement to enforce seat belt laws.

*Rule* The Secretary has issued a proposed regulation establishing a standard requiring the Ratlight in passenger vehicles. After written comments both pro and con were received, a hearing was held in accordance with the informal rulemaking procedures of APA 503.

At the hearing, at which the Assistant Secretary of Transportation presided, interest groups representing consumers supported the standard, and the motor vehicle industry strongly opposed it.

General Motors, on behalf of the industry, introduced the following evidence:

- Surveys that showed that the public does not like the idea of the Ratlight, some on privacy grounds.
- The Baltimore, Maryland police chief testified that police departments did not regard it as necessary.
- Installation of the Ratlight would add a significant cost to each vehicle.

Consumer groups introduced the following evidence:

- Surveys that showed that a significant part of the population, and an even higher percentage of those under 25, did not consistently wear their seat belts.
- The Raleigh, North Carolina chief of police, and the Assistant Chief of Police of Lubbock, Texas, testified that police departments believe the Ratlight would contribute to motor vehicle safety.
- Safety experts testified to the extent to which seat belts, when worn, are effective. Both statistical and anecdotal evidence was introduced.

The Assistant Secretary ~~refused to~~ admit evidence proffered by GM about injuries incurred in accidents by passengers which resulted from their wearing seat belts.

Afer the hearing, prior to action on adoption of the final regulation:

- The Vice President for North American Sales of General Motors, met with his friend, the Secretary, a former Vice President of Delco Batteries, a major original equipment supplier to the auto industry, and initiated a discussion of the proposed regulation, emphasizing the high costs involved.
- General Motors submitted a written proposal of an alternative method of assuring seat belt use, a blinking interior light which would remain on for three minutes after the vehicle's motor started. The Secretary summarily refused to consider the GM proposal.
- The teenage son of the Secretary was seriously injured in an auto accident while not wearing his seat belt.

A final regulation was issued, written by the Assistant Secretary of the Department of Transportation and signed by the Secretary, adopting the standard, and making the Ratlight mandatory for all cars, light pickups, minivans and SUVs manufactured in 2011.

Both parties appeal to the Court of Appeals, which has jurisdiction over appeals from final actions of the Secretary.

- Both parties argue prejudice from the facts and

procedures prior to adoption of the rule.

- General Motors contends that the regulation is unnecessary, not supported by the data presented to the hearing, and unduly expensive for the purported benefits. GM also questions the impartiality of the Secretary.
- The consumer groups contend that the regulation is inadequate because it does not cover all pickup trucks and full size vans and does not go into effect for six years.

Discuss:

- A. The contentions of the parties, evaluating the strength of each argument;
- B. The nature and standard of review of the appeals by the Court of Appeals;
- C. The likely decision of the Court of Appeals.

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**Grade:** \_\_\_\_\_

1)

A) The Enabling Legislation empowers the Secretary to issue standards.

The APA requires that when rules are made by agencies there must be notice given and comments accepted.

Here there was a full hearing with substantial evidence produced on both sides.

There is compliance with the APA.

The authority granted by the Act is to promulgate safety standard that "will improve highway safety".

Evidence was produced indicating that seat belts are effective when worn, that seat belts are not consistently worn and an individual testified that Police departments believed that the Red Light would contribute to safety. ✓

Under the Chevron, Packard and NLRB v Hearst and their progeny Courts will defer to Agency decisions when the regulatory policy is technical and complies with the statute. ✓

The attempt to increase safety is highly technical. The light system suggested here monitors the specific action of the occupants and transmits an indication of non-compliance to law enforcement. This is complicated enough to qualify for Chevron deference. ✓

Courts will also defer to the agency when the decision involves the reconciliation of competing policies. There are competing policies here. There are the auto manufacturers and the consumers with diametrically opposed desires. ✓

Did congress intend for the agency to have the power to make rules that will increase

safety. Yes the statute states just that. Courts will use their own judgment in interpreting the enabling legislation and will not second guess the agencies if their decision are with in the scope of powers granted by the statute and not inconsistent with specific legislation.

Since the secretary did what he was authorized to do, at first blush it appears that the courts will not intercede.

Courts will generally defer to the agency's decision with respect to fact findings. In the hearings prior to the rule issue there was an inquiry into the facts.

The Specific language of the statute or the "enabling legislation" states issue standards that will improve motor vehicle safety, and the agency imposed on itself that "great weight" shall be given to the views of the automobile manufactures. Courts interpreting this language will give it its plain meaning. Here the Assistant Secretary "refused to admit evidence proffered by GM". This is inconsistent with "giving great weight" to the auto manufacturers. // Under §706 a reviewing court shall - compel agency action unlawfully withheld or unreasonably delayed. The disallowance of the evidence is in contravention of the provisions of the enabling legislation. This is a string argument and would be grounds for judicial review. // However the court would not usurp the Agency's power to decide the merits of the Rat Light, they would only require that the agency hear the evidence and give it great weight as they are mandated. They could determine whether the agency gave it great weight or not, perhaps if the evidence were allowed but obviously discounted. ✓

The facts indicate a biased on the part of the secretary. He is friends with and has discussions with VP of GM sales. The secretary has also had a son seriously injured while not wearing the seat belt. This is also a good argument for review. In *Grolier v. FTC* the issue of biased was discussed and the court indicated, not necessarily that the officer should be excused but that evidence indicating his ~~biased~~ must be allowed to be presented.

OK

The manufacturers argue that the public doesn't like the light on privacy grounds. The Court is the final arbitrator of the constitution and could decide if a rule is in violation. In *North American Cold Storage* there was a deprivation of property with due process and the Court held that public safety concerns could require immediate action, permitting the deprivation as long as there was a post deprivation hearing. I cite this to support the fact that the agency could regulate the seat belts even if it would violate some peoples privacy. Therefore as long as it is in the interest of safety and the agency is legislatively empowered to, this snooping, snitching policy will not fall on privacy grounds. Just look, for example, at the intersection cameras!

true

OK!

The consumer group is upset because the rule excludes some models of trucks, and that the policy will not take effect for some years. Courts will not get involved with running the agency. They would not comment on the time frame for implementation. They might inquire as to why certain models were excluded and if the agency had rational deliberated reasons then that would be within the province of the agency.

2)

B) The court, should they take the case, would not conduct a de novo review. There is a record extant from which the court has enough to consider what it can do under 706.

If the first amendment argument were successfully argued, which it could be, the court would surely strike down the entire Rat light program. The argument that people have less a an expectation of privacy in vehicles because of the visibility, glass all around, that they necessarily subject themselves to is a good one. However this device is not necessary (evidence presented by the MD police chief) as glass is. The device solely monitors and notifies law enforcement. Or is it a violation of privacy as metal detectors are? But courts avoid the constitutional question if the decision can be reached on other grounds. OK

The court would review the record and allow testimony as to the perceived prejudice by each party.

The court would not decide the merits of the program. It would determine if the agency followed procedure, the APA. It would determine if the agency followed its own regulations. It would determine if those regulations were consistent with the constitution. It would determine if the agency actions were with in the powers granted by the enabling legislation. ✓  
✓  
✓

The court would seek reasons for the secretary's refusal to admit certain evidence.

Stated in the facts the evidence refused was evidence of injuries caused by seatbelts.

This may or may not have been germane to the hearings purpose. The court would decide if the vacancy took into consideration, not the evidence itself but, whether or not the agency's decision was reasonable.

The court will consider the bias of the secretary and his assistant. If the court finds arbitrary or capricious decisions they could enjoin the program. The court will consider the reason for the summary refusal to accept the report by the GM on an alternative proposal. The court would read this report and compel the agency to consider it.

It will decide the issue of whether the agency has failed to give great weight to the auto makers desires.

3)

C)

Courts defer to agencies when it is clear that they have a legislative mandate to act, rule, decide, and implement policy. It appears that congress has granted the power to make rules that would increase safety to the Secretary, and the agency self imposed "subject to the auto manufactures weighty views". This is subject to some interpretation

but the power to make the rule lies with the secretary. He might have a tough decision that alienates the automakers but this policy is one that is within his power. Since the term great weight is ambiguous the courts will not delve too far; reasonable deliberative consideration is sufficient.

The privacy issue the courts will not address, because congress has effectively legislated it out of consideration. In the interest of safety motorist will have to sacrifice. ✓

The refusal to accept the evidence of seat belt caused injuries the court will not find fault with the agencies findings that it was not germane to a hearing on the beneficial use of seat belts. ✓ ✓

The refusal to consider the alternate proposal may go either way. It would do no harm for the agency to consider it and then if they reject it any way that court can't fault them for not considering it. I would rule that the secretary consider it before disposing of it. ✓

On the issue of the bias, the court should rule that the secretary, although extremely biased (his son was injured), gave fair consideration to all that appeared to be heard. ✓

On the issue of the agency following it own policy: The internal rule stated that consideration should be given to relevant available safety data, and some was disregarded. However a hearing was held and adequate consideration was given. ✓

The court should uphold the decision.

**END OF EXAM**