**CJA 423 TAKEHOME**

**FINAL EXAM**

1. After you describe the FOIA to someone whom you have just met at a party, he says that he would like to find out if the federal government has any records about him. He is willing to pay any reasonable fees that the government might charge for responding to his request. He asks you, though, whether the federal government would honor a FOIA request for any records in the federal government’s possession that mention his name. What would you say?
2. The federal Animal Welfare Act protects animals used in scientific research. To that end, the Act authorizes the Secretary of Agriculture to license people involved in raising research animals. It also authorizes the Secretary to prescribe standards of care for the licensees to follow. Using that authority, the Secretary has issued detailed regulations for each type of research animal, covering virtually every aspect of their care (such as food, lighting, space, hygiene, transportation, and veterinary care). To ensure compliance with these standards, the Act requires licensees to keep detailed records. It also authorizes agents of the Secretary to inspect the premises and records of these licensees during specified daytime hours. Violations of the Act and its implementing regulations can lead to civil penalties and suspension or revocation of the required license.

Bonnie and Jim Hare have a license under the Animal Welfare Act to raise rabbits for research. On two different days, they refused to let a Department of Agriculture official inspect their rabbitry. They refused to permit the inspections because the inspector did not have a search warrant. The Secretary assessed civil fines against the Hares totaling $1,000 for their refusal to allow the inspections. After exhausting their administrative remedies, they seek judicial review of the fines, contending that the warrantless inspections authorized under the Act violate the Fourth Amendment. Are they right?

1. The United States Department of Agriculture administers a federal statute called the Pork Promotion, Research, and Consumer Information Act of 1985. The Act creates a marketing program to promote pork. The program is funded by mandatory fees paid by the nation’s pork producers. An organization called the Campaign for Family Farms (CFC) submits a petition to the Secretary of Agriculture, signed by many pork producers, urging the Secretary to end the mandatory-fee system. Another organization, which is called the National Pork Producers Council (the Council) and which supports the mandatory-fee system, files a FOIA request for a copy of the CFC petition.

Upon learning that the Secretary intends to honor the Council’s FOIA request, the CFC sues the Department of Agriculture for preliminary and permanent injunctions against the disclosure. The CFC contends that the petition falls within FOIA Exemption 6. The CFC recognizes that the FOIA exemptions are discretionary, not mandatory. The CFC argues, however, that a Department of Agriculture regulation requires the Department to withhold material that falls within Exemption 6.

Assume that the CFC correctly interprets a Department of Agriculture regulation to require the Department to withhold information that falls within Exemption 6. If the court agrees with the CFC that the petition falls within Exemption 6, should it set aside the Department’s decision to disclose the petition? Explain and provide case law to support it.

1. Under the Clean Air Act, owners of “major stationary sources” of air pollution in areas of the country not meeting the National Ambient Air Quality Standards are required to meet very stringent requirements whenever they modify a major stationary source so that it increases pollution. The Environmental Protection Agency (EPA) adopted a rule under the Clean Air Act that interpreted the term “stationary source” in the Act to mean a collection of smokestacks within a contiguous facility. The effect of this interpretation was to allow a company to avoid the stringent requirements incident to modifying their facilities by offsetting any increase in pollution from one smokestack by decreasing emissions from other smokestacks at the facility so that the whole facility’s emissions did not increase. This was known as the “bubble policy,” because it in effect allowed a company to place a bubble over a facility and measure the emissions from the bubble, rather than from each smokestack. An environmental group, unhappy because this interpretation would enable facilities to avoid stringent emission limitations in many cases, seeks judicial review of the rule, alleging that the term “stationary source” in the Act requires each smokestack to be considered a separate source. The Act does not itself define the term. How, if at all, should courts defer to EPA’s interpretation? Explain and provide case law to support it.
2. The FCC adopts a rule requiring cable companies offering broadband Internet connections to allow any Internet service provider to use their facilities. This rule in effect prohibits a cable company from limiting its customers to its own Internet service provider. A cable company that wishes to restrict users to its own Internet service provider wants to sue. Does it have standing? Explain and provide case law to support it.