INSTRUCTIONS

The examination consists of three essay questions, all of which you should answer. The essays are of equal weight for grading. You should devote an hour to each question.

Read carefully. Think before you write. Accurate reading of the question is essential. Good organization, clear statement and avoidance of irrelevancies and filler all count in your favor. Proper citation form is not necessary, but you should refer to the text of the Constitution and to cases in answering the questions.

Some of the facts in these questions overlap with current events. Write about the facts I have given you. You do not need to add personal knowledge of these events in order to write a good examination answer.

The examination is open book. I have not put any restrictions on the materials you may bring to the exam. You may of course not consult with another person.

If you write your exam, use one side of a page only, and skip lines. If you type, double space, and leave wide margins.

Good luck, and happy holidays.
QUESTION  I  (60 minutes)

In 1990, Congress passed the Gun-Free School Zones Act. Section 922(q)(1) of the Act provides: "It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." Section 922(q)(2) makes it "illegal to intentionally or recklessly discharge a firearm in a known school zone."

Mary Jones, a twelfth grade student at Bell High School in Dallas, Texas, arrived at school carrying a concealed .38 caliber handgun. Based upon an anonymous tip, school officials confronted Jones, who admitted that she was carrying the weapon. Jones was charged and convicted of possessing a firearm in a school zone under the Gun-Free School Zones Act.

Jones appeals her conviction, arguing that section 922(q) exceeds Congress' delegated powers. The government counters that section 922(q) is a permissible exercise of Congress' power.

What arguments will each side present? Who will win?
QUESTION II (SO minutes)

The Ethics in Government Act lapsed in December of 1992, but was reauthorized in 1994. In the interim, while the Act had expired, Attorney General Reno appointed Robert B. Fiske as an independent counsel to investigate the Whitewater matter. The Whitewater matter involves allegations of financial misconduct against President Bill Clinton for activity that took place when he was Governor of Arkansas.

After the reauthorization of the Ethics in Government Act by Congress, the Attorney General applied to the Special Division for the appointment of an independent counsel under the Act. The special Division named Kenneth Starr as independent counsel in the Whitewater case. Fiske was not reappointed. Judge David Sentelle was one of the three members of the Special Division.

After Starr's appointment, the press reported that Sentelle had met with Republican Senators Jesse Helms and Lauch Faircloth while the appointment was pending before the Special Division. Both Helms and Faircloth had been publicly critical of Fiske's investigation.

Complaints were filed against Judge Sentelle, alleging that he engaged in misconduct by consulting with the Senators. The Court of Appeals for the District of Columbia dismissed the complaint. As part of his opinion on the matter, Judge Harry Edwards concluded that "when acting to appoint an independent counsel, a member of the Special Division draws authority not from Article III of the United States Constitution, but from Article II." Edwards concluded that consultation with the Senators did not violate Article II.

Does Judge Sentelle's participation in the Special Division violate the separation of powers? Why or why not?

What authority—does Judge Sentelle exercise—under Article II? Does the exercise of Article II powers by a judge violate Separation of powers?

Is Judge Edwards correct that Sentelle’s consultation with the Senators does not violate separation of powers?

Does President Clinton have immunity for any Whitewater Prosecutions?
In an era of retrenchment, Congressional staffs have been cut. You are legislative aide to three Senators. Each Senator wishes to propose a federal statute on the subject of abortion. Senator A wants to propose a human life statute that will protect human life from the moment of conception. Senator B wants to codify Roe v. Wade. Senator C is worried about further changes in personnel on the Supreme Court, and wants Congress to codify Planned Parenthood v. Casey.

The Senators ask you to draft the language of the three statutes. What will the statutes say?

The Senators are also worried about constitutional challenges to the statutes from their opponents. Is each of your proposed statutes constitutional? Why or why not?