How abortion, freedom and corruption are depicted in the constitution's fifth and...

Law

In the Fifth and Fourteenth Amendments to the United States Constitution, the deprivation of " life, liberty, or property without due process of law" serves as an assurance that federal and state governments will protect the individual interests of their citizens by way of a proper notice and hearing before certain rights may be infringed upon. While assessing the deprivation of life is often a clear-cut scenario, the liberty and property angles reflect a host of uncertainties, and, when placed in the context of notable Supreme Court decisions, bear all manner of interpretation in establishing how public employees, citizens, and organizations have framed these key interests.

In the realm of public employment, probationary periods ranging from months to years are utilized as a means to discern whether an employee is fit to continue working in a given organization. Pending approval via a formal review process, the probationary employee is granted tenure – a term most commonly associated with institutions of higher learning – and from that, establishes a property interest as defined by state or local law in the context of due process. Employees who do not satisfy their superiors during the probationary period are not granted a continuing expectation of employment, and therefore, cannot sue their employer based on this interest. However, if the reasoning behind such termination leads to an inhibition in seeking future employment, a liberty interest is established. Freedom of speech and association, as well as discrimination based on any number of gender, age, sex, and other criteria are constitutionally protected rights, and an employee who can demonstrate an overstep of those rights as the primary reason for their termination possesses just such an interest in the context of due process. Two cases in particular bear the chief hallmarks

of these interests, and reveal the range of interpretation that the Supreme Court has applied in ruling whether or not an interest has been infringed upon.

In the landmark Pickering v. Board of Education, in which a high school teacher's letter to the editor was critical of his employer's decision regarding bond issues, the school administration fired the teacher on account of alleged false and damaging claims contained within his letter. In filing his suit, Pickering argued that his statements were considered protected speech under the First Amendment. In the absence of definitive proof that the statements caused harm to an individual teacher, administrator, or the school district as a whole, a unanimous Supreme Court reasoned that Pickering's right to speak on this matter in a public forum was not sufficient grounds for termination, and that he did indeed possess a liberty interest. In Board of Regents v. Roth, however, a university professor was terminated at the end of a one-year probationary period, claiming both a liberty and property interest based on comments critical of the university, coupled with the institution's lack of a hearing prior to his firing. In reversing the decision of the lower courts, the majority opinion of the Supreme Court held that Roth's termination at the end of his non-contractual probationary period did not create a compelling property interest, and furthermore, that " The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and association in the community," nullifying Roth's claimed liberty interest. (Board of Regents v. Roth, 1972)

The consideration of due process in terms of liberty and property within administrative law have similarly been witness to Supreme Court decisions involving citizens who do not serve as public employees. An example of due process in this regard can be found in the decision rendered in Ingraham v. Wright, where a student's paddling was considered under the Eighth Amendment's stipulation against " cruel and unusual punishment," and whether due process as established by the Fourteenth Amendment was applicable to instances of corporal punishment in public schools. In a contentious 5-4 decision, the majority reasoned that existing statutes within Florida state law called for school administrators to exercise restraint in punishing a student, and furthermore, protected the student from excessive punishments through the enforcement fines and criminal penalties against the offending teacher or principal. Due process, in this case, was believed to be sufficiently covered by this exercise of common law, " compounded of history, reason, and the past course of decisions." (Ingraham v. Wright, 1977) As such, neither cruel or unusual punishment, nor a liberty interest could be established by Ingraham, and from a wider perspective, was reflective of the end of the due process revolution.

In Wisconsin v. Constantineau, however, an altogether different verdict was reached in assessing whether or not an individual's reputation can be harmed based on the denial of due process as established within an existing statute. Pursuant to a certain Wisconsin Act, the chief of police in Hartford, Wisconsin, posted a notice banning the sale and gifting of liquor to an individual who was perceived to be a public nuisance when intoxicated. The statute under which the chief of police acted prohibited due process, the

Supreme Court reasoned, by not providing prior notice to the individual in question. As such, Constantineau held a private interest based on the “ label or characterization given a person by ‘ posting,’ though a mark of serious illness to some, is to others such a stigma or badge of disgrace that procedural due process requires notice and an opportunity to be heard.” (Wisconsin v. Constantineau, 1971). As this case is considered one of the hallmarks of the due process revolution, in contrast to that of Ingraham v. Wright, one can see the complexities of due process as a direct result of the Supreme Court’s individual (and collective) interpretations of the law.

2) As part of Congress’ transfer of regulatory power onto federal agencies, the consolidation of expertise specific to a particular agency’s agenda requires a certain level of gathering and disseminating information to ensure that policies are properly implemented and executed. Agencies from all levels of government acquire information in three ways: by requiring private parties to maintain detailed records for the purposes of submitting regular reports, subpoenas that call for an individual or group to bring documents and testimony into a court of law, and inspections of an institution’s physical holdings. In addition to these methods of obtaining information, the dissemination of such material by the government has been characterized in recent decades by the Freedom of Information Act. As a crucial aspect of the modern day administrative state, FOIA seeks to enhance the democratic experience by requiring agencies to provide information specific to another party’s request, unless such information falls under one of nine exemptions. In assessing a number of Supreme Court cases as related to various information gathering and disseminating practices, the restrictions behind

these efforts reveal a host of legal interpretations regarding the advancement or lack thereof of information retrieval surrounding federal agencies.

In considering the physical inspection approach, an important question that must be considered is the extent to which the Fourth Amendment plays in administrative searches. In Wyman v. James, where the beneficiary of the Aid to Families with Dependent Children program would not allow a caseworker into her home as required by law, the plaintiff, Barbara James, was met with a termination of her benefits, to which she filed suit on the basis of her Fourth Amendment rights, which grants " the right of the people to be secure in their persons, houses, paper, and effects." In reversing the decision of the lower courts that initially favored Mrs. James, the 6-3 majority reasoned that the caseworker's planned visit was an essential component in assessing whether or not the benefits for Mrs. James and her child would be continued. Furthermore, as this program was funded by taxpayers, the state holds a vested interest in knowing whether the funds distributed to the families who use the AFDC program are being properly utilized. The limits of the Fourth Amendment as related to underscoring the federal government's aim to gather information is well contained in the decision found in National Treasury Union v. Van Raab, which considered whether a newly-introduced drug testing program for employees in the United States Customs Service was an overstep of unreasonable searches and seizures. In upholding the decision of the Court of Appeals, the Supreme Court reasoned that such " suspicion-less searches" as part of a substantial government interest in combating the drug trade was a reasonable tradeoff of privacy as customs

personnel “ should expect effective inquiry into their fitness and probity.” Indeed, the methods and restrictions associated with obtaining information are not always clear-cut, and have come to be established on an agency-by-agency basis, as related to specific government interests.

In disseminating gathered information to interested parties, especially within the wake of the Freedom of Information Act, a number of cases have sought to define the terms that distinguish the Act’s nine exemptions, leading to substantial legal tests as related to government interests. Exemption #4, which pertains to confidential business information, addresses the fact that if “ an agency possesses the information than an individual has requested and the information constitutes a trade secret, the agency can – if it chooses – withhold that information.” (Cann, 2006, p. 213) The nature of what exactly defines confidential was determined by the United States Court of Appeals for the District of Columbia in National Parks and Conservation Association v. Morton. By applying a two-pronged test in asking if the material in question, concerning agency records regarding concessions within the national parks, was “ the kind of information that the person who gave it to the agency would not want released to the public,” and “ if the information were withheld, would that be consistent with the legislative purpose behind the exemption,” the national parks, as a monopoly, would not be harmed in impairing the government’s ability to obtain such information in the future, nor would it bring competitive harm down upon itself in releasing such information.

A similarly important exemption within the FOIA, that of internal government communications, speaks to attorney/client relations and executive privilege. As evidenced in National Labor Relations Board v. Sears, Roebuck & Company, the qualification for this exemption must ask whether the information in question not only predates the decision at hand, but also if it was relied on in making that very same decision. As this exemption exists as protection for the policymaking process of government, Sears & Co.'s desire for disclosure from the NLRB regarding the filing of unfair labor practice complaints was ordered to be released, as the memo in question decided that further action in filing these very complaints would not be taken. Indeed, while some of the key terms contained in FOIA's exemptions have led to substantial litigation, its overall effect in increasing transparency and communication between interested parties and agencies has had a positive effect on improving the democratic process within the administrative state.