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A Casebook

*Seventh
Edition*



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A CASEBOOK

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This book is dedicated

by Bernard Schwartz to Brian, who persuaded him to
undertake this casebook

and by Roberto Corrada to Cándido and Vilma, his parents

and by J. Robert Brown, Jr., to Allison Herren Lee,
his inspiration for all things in life

Preface to the 7th Edition

In the preface to the 6th edition, we reported that two events had dramatically affected the landscape of administrative law since the 5th edition of the casebook. The first of these, the bracing attacks on the World Trade Center of September 11, 2001, and the second, the Enron scandal. While these events have had a lasting impact on government regulation, and, indeed on the national psyche, there has been no shortage, since the last edition, of landmark events intertwined with government regulation and administrative law. It is clear now that the next decade will see sweeping change in the way government is perceived and structured. Indeed, as this edition was going to print, parts of the Department of the Interior were being restructured in reaction to a massive oil spill in the Gulf of Mexico off the coast of Louisiana. At the same time, Congress passed an historic financial regulation law right on the heels of an historic health care reform measure. With this kind of change in the offing, the next edition of this casebook may need to be accelerated.

In addition to changes related to 9/11 and Enron, this edition contains new materials in Chapter 7 related to deference and the continuing saga of the *Chevron* doctrine, plus new items in Chapter 4 related to the ever-challenging distinction between legislative and nonlegislative rules. The modern law of due process in Chapter 5 contains several new cases as the law in that area continues to evolve. The biggest change to this edition involves Chapter 1. We have felt over the years that the Chapter 1 material on separation of powers needed to be more comprehensive and structured while retaining its introductory character. Our response was to rework the Chapter along the lines of government accountability thereby previewing the entire span of administrative law rather than just parts of the constitutional framework of administrative agencies as a transition to Chapter 2. The new Chapter 1 expands the discussion of agency authority and accountability. The Chapter looks at the preemptive effect of agency authority, and then systematically traces the oversight function of the President, Congress and the courts. Included as part of the new Chapter 1 are discussions of agency non-acquiescence (the ability of agencies to disregard holdings of federal courts of appeals) and the most recent effort by Congress to create an agency that tests the outer boundaries of the holdings in *Morrison* and *Humphrey's Executor*.

We continue to be guided by Bernard Schwartz's thinking on administrative law, as evidenced by his text and his many articles on the subject. As mentioned in a prior preface, Bernard Schwartz was dedicated to the advancement of administrative law. His text contains bits and pieces of his work in virtually every facet of administrative law, demonstrating his enormous commitment and contribution to the development of the area. While it may not have started as such, his text eventually came to be a showcase for his thinking on administrative law. We have endeavored to preserve the casebook as a legacy and testament to the force of his ideas on this subject. The following tributes to Bernard Schwartz attest to his extraordinary life in the law: Symposium, *The Life and Legacy of Bernard Schwartz*, 34 Tulsa L.J. 651-711 (1999); *In Memoriam: Bernard Schwartz*, 33 Tulsa L.J. 1041-1096 (1998); *Bernard Schwartz*, 73 N.Y.U. L. Rev. 701 (1998).

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Roberto L. Corrada
J. Robert Brown, Jr.

June 2010

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