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Fourth Edition



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WEST

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*For Renate,  
for Jeremy and Sarah,  
and for Laurence, Ben and Kate*



## PREFACE TO THE FOURTH EDITION

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Thirteen years ago we published the first edition of this casebook because we believed that, although there were several different and some other excellent administrative law casebooks, none focused on administrative law *practice*. Yet it was administrative law practice that each of us had found exciting and fun, a reaction quite common among other practitioners of administrative law. However, this was hardly the reaction most students had with respect to their course on administrative law. Perhaps, we thought, by focusing the book on practice we could both fill a pedagogical need and enliven the law school administrative law course for students at the same time.

Since the original publication of our book, we have been pleased with its reception. We continue to hear encomiums from professors who have used the book, both for the ease by which it teaches and for the positive reaction of students.

In writing this fourth edition, we have not strayed from the original model. Rather we have updated the cases and some of the problems and fine tuned some of the materials. Professors who have used the book before will find it familiar.

Our approach has remained the same. First, we rely on a problem method to simulate the day-to-day problem solving and advocacy in which administrative law practitioners engage. The problems are drawn from actual administrative law issues, and students are asked to perform the same functions as the administrative lawyers involved in these issues. As in real life, where most administrative law practice occurs in the agencies, rather than the courts, many problems are not structured as judicial appeals. For example, there is treatment of lobbying and the use of the political process as part of the administrative process. In addition, problems involving ethical issues peculiar to administrative law practice, which are almost never covered in professional responsibility courses, are included as an integral part of the book. The final chapter even deals with how many lawyers get paid in administrative law practice, an important practice issue.

Second, our coverage of the two basic procedural approaches in administrative law, rulemaking (Chapter 2) and adjudication (Chapter 3), is presented in chronological order. That is, coverage begins with the first event in each process and continues step-by-step until the completion of the administrative process and then judicial review is addressed. Thus, students can see how the system actually works.

Finally, as students become acquainted with the day-to-day realities of administrative law practice, we begin to raise some of the theoretical issues as well as the more complicated issues in administrative law. A lawyer is even

more effective if he or she understands the connections between an administrative law rule and the theories, often warring theories, that lie behind it.

Our approach affects the way that professors teach and students study. Each section of the book begins with a narrative description of the law, much like a hornbook, which may include short excerpts from leading cases. This material, including the cases, is intended to acquaint students with the legal rules that govern an area. If those rules are well settled and understood, the problems use the rules to explore the area beyond where the law is clear. Of course, where the basic law is not clear, it becomes a fertile source for the problems itself. Problem materials, which can include cases, statutes, regulations, and other materials, are provided as resources to aid the student in addressing the problems. These materials are the type of documents that a lawyer would consult in practice to resolve the issues presented by a real problem. While students will need to read the problem materials closely in order to resolve the problem presented, understanding these materials, particularly the cases, is not an end in itself; it is only a means to the end of trying to answer the problem, as in real life.

Although this book is different from other administrative law casebooks in its presentation and practice orientation, it is also traditional in several ways. First, all of the subject matter of traditional administrative law courses is included. The addition of more practice-oriented materials has not been at the sacrifice of traditional administrative law subjects. Second, the focus of the book is federal administrative law, although state administrative law issues and differences are not ignored. Each of the authors has substantial state administrative law experience, so the secondary place of state administrative law is not due to any belief in its lack of importance, especially as a practice area. Nevertheless, learning basic administrative law in a semester course is difficult enough, without attempting to play too many variations on a theme. Finally, we include the important questions of administrative law theory, although they receive less emphasis than in some other books, because of our practice orientation.

We continue to maintain an online web-based supplement to keep the book up to date with the latest administrative law developments. We view the casebook as a collaborative process, and we appreciate the feedback that we receive from our colleagues at other schools who use the casebook.

W.F.F.

S.A.S.

R.L.W.

# SUPPLEMENT

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A web-based supplement can be found at:  
[http://www.lclark.edu/law/faculty/william\\_funk/adlaw/](http://www.lclark.edu/law/faculty/william_funk/adlaw/).

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As those who have done so know, preparing a “casebook” is an arduous process, requiring the assistance of many persons. Not the least of those are the students who had to suffer through prior drafts. Preparing a “cases and problems book” is even harder on students, because problems, like exam questions, are not easy to write. Often, struggling with a problem in class demonstrates unforeseen difficulties. So, we are very grateful, if not a little apologetic, to the several classes of students at Lewis and Clark, Kansas, and Louisville that have helped to hone the problems in this book. If they work, it is largely due to the students’ feedback; if they do not, it is probably because we did not pay enough attention to the student comments. In addition, we would like to thank in particular Tom McMann at Louisville for his research assistance and Audie Huber, Maureen Flanagan, and Jennifer Reibman at Lewis and Clark for their proofreading. Of course, we retain all responsibility for any errors.

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