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Editor's Comments

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This issue marks the beginning of the second volume of the *Administrative Law Review* edited at the College of William and Mary. In my comments introducing our first volume, volume 42, I made several promises. The thrust of those promises was to provide consistently high quality articles covering the wide range of administrative and regulatory law. That volume, I contend, evidences a good faith effort in that direction.

In that volume we published quality articles of demonstrable diversity. Articles from noted administrative law scholars Arthur Bonfield, Paul Verkuil, Eleanor Kinney, Bernard Schwartz, James O'Reilly, Roger Schechter, Donald Elliot, and Peter Schuck ranged from state-required rulemaking to empirical research on judicial behavior. An international perspective was added by Spanish administrative law scholar Enrique Alonso Garcia, and legal theorist Frederick Schauer provided a philosophical perspective on a very practical administrative law question. Significant articles from practitioners Richard Leighton, Clinton Vince, and John Moot demonstrated the contribution practitioners can make to the body of legal scholarship. Leaders in related disciplines, economists William Shepherd and Frederick Scherer and political scientist Louis Fisher, gave the volume additional scope. Lastly, the first in a series of student projects, this one analyzing the impact of cost/benefit analysis on administrative law, portends a new avenue whereby the *Review* can serve administrative and regulatory law.

The volume beginning with this issue will also have considerable variety. In this issue, Ernest Gellhorn, chair of the section, provides an overview of the study of administrative law suggesting that more attention be paid to the nature of the specific political and social forces that are shaping the development of administrative law. Richard Pierce examines the predicament of the Federal Energy Regulatory Commission in developing a viable new regulatory structure for the electricity industry when the decisionmaking process is hampered, perhaps crippled, by inconsistent and shortsighted judicial review. Jonathan Entin sorts out the current state of the law about separation of powers. Frank Cross, Daniel Byrd III, and Lester Lave combine regulatory, scientific, and economic perspectives to propose a standard for more efficient and consistent risk management in the regulation of carcinogens. Added to these full-length articles is a translation of the new Chinese APA by Stephen Wood and Liu Chong.

This issue introduces a concept I hope will be a regular feature of the *Review*: discussions of teaching administrative law. In our initial feature,

Professors Roy Schotland and Richard Pierce discuss the problems of scope and emphasis in teaching administrative law. I hope that this exchange will encourage others to contribute their thoughts. I have taught many diverse subjects from such challenging theoretical courses as federal courts to complex technical courses such as securities regulation and business planning. Still, I believe administrative law is the most difficult course to teach. While I have developed various strategies over the years, I remain humbled in these efforts. Many who teach this course seem to feel much the same. Perhaps an exchange in this *Review* will evolve techniques which will make us all more comfortable with this course and create a new generation of understanding in our students.

One goal for the coming issues is an increase in practitioner works. No group has more reason to make an extra effort to improve the law and the understanding of the law. I recognize that it is an extra effort. Practitioners engage in scholarship in their largely mythical "spare time," and this demands a heroic commitment. Still, those who do so make a unique contribution to administrative law and hence reap large benefits, albeit often indirect and generally altruistic.

Section Chair Ernest Gellhorn, whose scholarship has had a lasting impact on administrative law, left a successful academic career for an equally successful practice. He observed in a recent issue of the *Administrative Law News*:

> The return to private practice reaffirms for me that if there is one thing that distinguishes the extraordinary practitioner, it is the willingness to explore theory, to look for a unifying thread. The practice of law often involves an interpretation of a set of facts in achieving a desired result. The lawyer's skill is not only in understanding what the law will permit but equally in marshalling the facts to fit within that framework. This requires the highest skill. Understanding the purpose and structure of the law — of its theoretical bases and objectives — are foundational.
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> It is also unfair to charge original and thoughtful academic scholarship as "useless theorizing." (What this comment usually means is that the speaker hasn't read or understood the article.) Truly theoretical work is intensely practical because it seeks to explain what is occurring, to put events into some ordered understanding. A theory which does not have any relationship to reality or is simply unworkable is a defective theory—it has no explanatory power. Such a "theory" is more accurately described as a vagrant idea in search of support.

He noted further that administrative and regulatory law practitioners, even more than others, have a "special relationship with academic scholarship." Because of this special relationship, practitioners in this field must not leave scholarship to the academics. Practitioners have a comparative advantage in those insights derived from working directly with the law.

Yet the *Review* receives only a small number of manuscripts from practi-

tioners. Furthermore, those few manuscripts too often contain no more than a body of lifeless research or a mundane technical description of a process or program. It is discouraging to receive such manuscripts from people who obviously possess not only considerable specialized experience but who must have focused that experience on some vital administrative law questions. Even including these efforts, however, submissions from practitioners have been discouragingly sparse. The call goes out then for the kind of practitioner scholarship that fulfills the functions identified by scholar and practitioner Gellhorn.

The prior volume of the *Administrative Law Review* provides two examples of the special value of practitioner works. Leighton's article offers experience supported by empirical research. In some ways the Vince and Moot article appears very much like an academic scholar's work, but on close inspection it explores a boiling practice controversy with an eye to the courtroom. Both articles advance understanding in a way that neither purely theoretical analysis nor mere summary of the law could.

Administrative law is not perfect: it needs work and it must continue to grow. Scholarship puzzles over its defects and nurtures its development. True, scholarship is explicitly one of the responsibilities of academics: we are the profession's research and development team and we are given the time and resources to carry forward that responsibility. That does not, however, relieve the profession's practicing arm from all such responsibility. The effort must include all of us who make our living at administrative and regulatory law. For my part, I will continue my caretaker duties, with the help of an extraordinary student staff, in maintaining our vision of the *Administrative Law Review* as "the most authoritative and consulted voice of administrative and regulatory law."

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Editor-in-Chief