

WILLIAM FUNK

Robert E. Jones Professor of Advocacy and Ethics
Lewis and Clark Law School
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EDUCATION:

J.D., Columbia Law School, 1973 (Admitted to practice, New York, 1974; Washington, DC, 1981; Supreme Court of the United States, 1983)

Awards or Activities:

James Kent Scholar, 1972-73
Harlan Fiske Stone Scholar, 1970-71, 1971-72
Writing and Research Editor, Columbia J. of Environmental Law, 1972-73
Captain, Columbia's National Moot Court Team, 1972-73
Archie O. Dawson Prize
Lawrence S. Greenbaum Prize

B.A., Harvard College, 1967

EMPLOYMENT HISTORY:

September 1983-Present -- Lewis and Clark Law School
2009-Present - Robert E. Jones Professor of Advocacy and Ethics
2008-2009 - Jeffrey Bain Faculty Scholar and Professor of Law
1986-2008 - Professor
1983-1986 - Associate Professor

Current Subjects: Administrative Law, Constitutional Law, Environmental Law

Past Subjects: Hazardous Waste Law Seminar, Sex and the Law Seminar, Toxic Torts Law, Pollution Control Law, LL.M. Environmental Law Seminar

Current Related Activities:

Vice Chair, Constitutional Law Committee, Administrative Law and Regulatory Practice Section, American Bar Association, 2009-Present
Fellow, American Bar Foundation, 2009-Present
Board Member, Oregon Lawyers Chapter, American Constitution Society, 2008-Present
Member, American Law Institute, 2007-Present
Editor, Administrative Law Abstracts, Social Science and Research Network, 2007-Present
Member, Executive Committee, Section on National Security Law, American Association of Law Schools, 2006-Present
Fellow, Administrative Law & Regulatory Practice Section, American Bar Association, 2005-Present
Member Scholar, Center for Progressive Reform, 2003-Present
Member, Commission on Environmental Law, The World Conservation Union, 2000-Present
Member, Publications Committee, Administrative Law and Regulatory Practice Section, American Bar Association, 1995-present
Lecturer in Environmental Law, U.S. Federal Judicial Center, 1993-1998, 2006-present

Past Related Activities

Member of ABA President's Task Force on Preemption of Product Liability Law, 2009
Member, Transparency and Public Participation Task Force of OMB Watch's Advancing the Public Interest Through the Regulatory Reform Project, 2008
Chair, Nominating Committee, Administrative Law and Regulatory Practice Section, American Bar Association, 2005-06
Advisory Board on Administrative Law, Social Science and Research Network, 1999-2006
Chair, Administrative Law and Regulatory Practice Section, ABA, 2003-04
Chair, Administrative Law Section, Association of American Law Schools, 2002-2003
Executive Committee, Administrative Law Section, Association of American Law Schools, 2000-2003
Reporter, APA Project, Administrative Law and Regulatory Practice Section, American Bar Association, 2000-2004
Editor-in-Chief, Administrative & Regulatory Law News, Administrative Law and Regulatory Practice Section, American Bar Association, 1990-2002
Chair, Oregon Department of Environmental Quality Advisory Committee to Develop Green Permit Rules, 1998-2000
Member, Oregon Department of Environmental Quality Advisory Committee to Develop Hazardous Waste Cleanup Rules, 1995-1999
Chair, Natural Resources Section, Association of American Law Schools, 1999
Lecturer in Environmental Law, U.S. Forest Service, 1994-1998
Lecturer in Environmental Law, U.S. Fish & Wildlife Service, 1995-1998
Lecturer in Environmental Law, U.S. Army Corps of Engineers, 1992-1997
Consultant on Administrative Law, Columbia River Gorge Commission, 1997
Consultant, Administrative Conference of the United States, 1985-1986, 1991-1993, 1994-1995
Member, Administrative Rules Advisory Committee, Secretary of State, Oregon, 1991-1992
Ex Officio Member, Administrative Law Committee, Oregon State Bar, 1987-92
Author of and Final Round Judge of the National Administrative Law Moot Court Competition, University of Dayton Law School, 1992
Member, Advisory Committee to the National Judicial College on creation of a course on Judicial Review of Administrative Action for state judges, 1991
Member, Affirmative Action Task Force, Oregon State Bar, 1991
Member, City/County Commission on the Bicentennial of the United States Constitution, 1987-1991
Council Member, ABA Administrative Law Section, 1988-1990
Chairman, Federal Register, Reports and Paperwork Committee, ABA Administrative Law Section, 1986-1988
Vice Chairman, Judicial Review Committee, ABA Administrative Law Section, 1985-1988
Consultant, U.S. Dept. of Energy, 1983-1985

September 2004- July 2005 – Senior Fulbright Scholar, Heidelberg University, Germany

July 1978-September 1983 -- U.S. Department of Energy
1981-1983--Assistant General Counsel for Regulatory Oversight
1979-1981--Assistant General Counsel for Petroleum Regulations
1978-1979--Deputy Assistant General Counsel for Legal Counsel

William Funk
May 14, 2010

Awards: Exceptional Service Award, 1983
Special Citation from the Secretary of Energy for Outstanding Performance, 1981
Department of Energy Nominee for the Federal Bar Association's Younger Federal
Lawyer of the Year, 1981

October 1977-July 1978
Principal Staff Member
Legislation Subcommittee
U.S. House of Representatives Permanent Select Committee on Intelligence

August 1974-October 1977
Staff Attorney
Office of Legal Counsel
U.S. Department of Justice

Award: Attorney General Special Commendation for Outstanding Service, 1976

July 1973-July 1974
Law Clerk to Judge James Oakes
U.S. Court of Appeals for the 2d Circuit

1967-1970
First Lieutenant, U.S. Army Military Intelligence

William Funk
May 14, 2010

RECENT SPEECHES OUTSIDE THE LAW SCHOOL

The Supreme Court's Jurisdiction, Freie Universitaet, Berlin, Germany (June 2009)
The Obama Administration and Climate Change, Heidelberg Center for American Studies, Heidelberg, Germany (July 2009)
Teaching Doctrine in a Post-Realist World, Southeastern Association of Law Schools Annual Meeting, Palm Beach, FL (July 2009)
Roundtable on Regulation By Litigation (invited workshop), Case Western Law School (September 2009)
Moderator for Panel on Public Health and the NAAQS at The Clean Air Act at a Crossroads: Turning 40, Confronting Climate Change, Lewis & Clark Environmental Law Symposium (April 2010)
Recent Developments in Constitutional Law, Administrative Law Conference, American Bar Association, Washington, DC (October 2009)
Speaker on film A Class Apart [about the Supreme Court case *Hernandez v. Texas*] for Lawyers Chapter, American Constitution Society (January 2010)
Moderator of program on *Citizens United v. FEC* for Lawyers Chapter, American Constitution Society (April 2010)
Constitutional Implications of RGGI, Panel Presentation on Regional Greenhouse Gas Initiatives, Panel Presentation on Regional Greenhouse Gas Initiatives, ABA Midyear Meeting, Boston, MA (February 2009)
Recent Developments in Federal Administrative Law, OLI Program on Administrative Law, Portland, OR (February 2009)
Workshop for Non-Profits and Hill Staff on Preemption of State Tort Law by Federal Agency Action (December 2008)
Constitutional Implications of RGGI, Panel Presentation on Regional Greenhouse Gas Initiatives, ABA Administrative Law Fall Conference, Washington, DC (October 2008)
Transparency in Government Decisionmaking, Panel Presentation on Recommendations for the New President, ABA Administrative Law Fall Conference, Washington, DC (October 2008)
Workshop for Non-Profits and Hill Staff on Preemption of State Tort Law by Federal Agency Action (July 2008)
Teaching Constitutional Law in the 21st Century, Southeastern Association of Law Schools Annual Meeting, Palm Beach, FL (July 2008)
Public Participation and Transparency in Administrative Law, BiAnnual Administrative Law Forum, Montpellier, France (May 2008)
Preemption of State Tort Law by Agency Action, AALS Annual Meeting, New York, NY (January 2008)
Why Is It So Hard to Pass Environmental Legislation?, Panel Speaker at educational forum for Harvard College 40th Reunion attendees (October 2007)
Federal Agency Preemption of State Tort Law, SEALS Annual Meeting, Amelia Island, FL (July 2007)
Electronic Surveillance of Terrorism: A History, Symposium on Crimes, War Crimes, and the War on Terror, Portland, OR (April 2007)
Federal Preemption of State Law, ABA Midyear Meeting, Miami, FL (February 2007)
Electronic Surveillance for Foreign Intelligence Purposes, Japanese Americans Citizens League Day of Remembrance Program, Fighting for Civil Rights in an Era of Terror, Portland, OR (February 2007)
Writing and Publishing Casebooks, AALS Annual Meeting, Washington, DC (January 2007)
Conference on Federalism in the Overlapping Territory, Duke Law School, Durham, N.C. (Nov. 2006)

William Funk
May 14, 2010

Panel on Preemption and State Tort Law, Fall Administrative Law Conference, Wash., D.C. (Oct. 2006)
Rise and Purported Demise of *Wong Yang Sung*, BiAnnual Administrative Law Forum, Louisville, KY (May 2006)
Panel on Teaching Practice in the Classroom, Southeastern Association of Law Schools Annual Conference, Palm Beach, FL (July 2006)
Law Day Panel Presentation on NSA Warrantless Electronic Surveillance, Multnomah Bar Ass'n, at PSU (May 2006)
Warrantless NSA Electronic Surveillance, Thursday Forum, Portland, OR (March 2006)
Heidelberg Center for American Studies, The Same Sex Marriage Debate in the United States, Heidelberg, Germany (October 2005)
Intimidation and the Internet, Mainz University Free Speech Forum, Mainz, Germany (June 2005)

RECENT CONFERENCES ATTENDED

Southeastern Association of Law Schools Annual Meeting, Palm Beach, FL (July 2009)
AALS Annual Meeting, New Orleans, LA (January 2010)
The Clean Air Act at a Crossroads: Turning 40, Confronting Climate Change, Portland, OR (April 2010)
RMMLF Bi-Annual Natural Resources Law Teachers Conference, Chico Hot Springs, MT (May 2009)
Greening the Grid: Building a Legal Framework for Carbon Neutrality, Lewis & Clark Environmental Law Symposium (April 2009)
AALS Annual Meeting, San Diego, CA (January 2009)
Southeastern Association of Law Schools Annual Meeting, Palm Beach, FL (July 2008)
BiAnnual Administrative Law Forum, Montpellier, France (May 2008)
ABA Administrative Law and Regulatory Practice Section Spring Meeting, Las Vegas, NV (May 2008)
American Law Institute Annual Meeting, Washington, DC (May 2008)
OMB Watch Task Force Meeting, Washington, DC (March 2008)(by phone-in)
ABA Midyear Meeting, Los Angeles, CA (February 2008)
AALS Annual Meeting, New York, NY (January 2008)
Semi-Annual Meeting of the Center for Progressive Reform, New York, NY (January 2008)
Conference of Environmental Law Program Directors, Los Angeles, CA (January 2008)
ABA Administrative and Regulatory Practice Section Fall Conference, Washington, DC (October 2007)
ABA Annual Meeting, San Francisco, CA (August 2007)
SEALS Annual Meeting, Amelia Island, FL (July 2007)
ABA Administrative Law and Regulatory Practice Section Spring Meeting, Austin, TX (May 2007)
ABA Midyear Meeting, Miami, FL (February 2007)
Semi-Annual Meeting of the Center for Progressive Reform, Washington, DC (January 2007)
AALS Annual Meeting, Washington, DC (January 2007)
American Constitution Society/Center for Progressive Reform Conference on Federalism in the Overlapping Territory, Duke Law School, Durham, NC (November 2006)
ABA Administrative and Regulatory Practice Section Fall Conference, Washington, DC (October 2006)
Southeastern Association of Law Schools Annual Meeting, Palm Beach, FL (July 2006)

William Funk
May 14, 2010

SemiAnnual Center for Progressive Reform Meeting, Georgetown University Law School, Washington, DC (May 2006)
The 2006 Frankel Symposium: Preventing and Responding to Catastrophe: The Role of Environmental Law and Policy, UCLA Law School (April 2006)
Environmental Law Program Faculty/Directors' Meeting, UCLA School of Law (April 2006)
Midyear Meeting of the American Bar Association and Council Meeting, Administrative Law & Regulatory Practice Section, American Bar Association, Chicago, IL (February 2006)
SemiAnnual Center for Progressive Reform Meeting, Georgetown University Law School, Washington, DC (January 2006)
AALS Annual Meeting, Washington, DC (January 2006)

PUBLICATIONS:

Books:

Legal Protection of the Environment, 3d Ed. (with Craig Johnston and Victor Flatt)(West Group 2010)
Administrative Procedure and Practice: Problems and Cases, 4th Ed. (with Sidney Shapiro and Russell Weaver) (West Group 2010)
Administrative Law: Examples & Explanations, 3d ed.(with Richard Seamon) (Aspen 2009)
Introduction to American Constitutional Structure (Thomson/West 2008)
Federal Administrative Procedure Sourcebook, 4th Ed. (with Jeffrey Lubbers and Charles Pou) (ABA Press 2008)

Law Review Articles and Book Chapters:

Judicial Deference and Regulatory Preemption by Federal Agencies, 84 Tulane L. Rev. 1233 (2010)
Constitutional Law and Separation of Powers, in Developments in Administrative Law and Regulatory Practice, 2008-09, ABA Press (2010)
Public Participation and Transparency in Administrative Law—Three Examples as an Object Lesson, 61 Admin. L. Rev. 171 (2009 Special Edition)
Constitutional Implications of Regional CO2 Cap-and-Trade Programs: the Northeast Regional Greenhouse Gas Initiative as a Case in Point, UCLA Journal of Environmental Law & Policy (forthcoming)
Preemption by Federal Agency Action, in Preemptive Choice: The Theory, Law, and Reality of Federalism's Core Question (Cambridge Univ. Press 2009)
The Truth About Torts: Regulatory Preemption at the National Highway Traffic Safety Administration, A Center for Progressive Reform White Paper (2008) (with co-authors Sidney Shapiro, David Vladeck, Nina Mendelson, Thomas McGarity, and Matthew Shudtz)
The Truth About Torts: Regulatory Preemption at the Consumer Product Safety Commission, A Center for Progressive Reform White Paper (2008) (with co-authors Sidney Shapiro, David Vladeck, Nina Mendelson, Thomas McGarity, and Matthew Shudtz)
Limiting Federal Agency Preemption: Recommendations for a New Federalism Executive Order (2008) (with co-authors Sidney Shapiro, David Vladeck, Nina Mendelson, Thomas McGarity, and Matthew Shudtz)
Electronic Surveillance of Terrorism: The Intelligence/Law Enforcement Dilemma – A History, 11 Lewis & Clark Law Review 1099 (2007)
Endangered Species Act in CPR for the Environment: Breathing New Life into the Nation's Major Environmental Statutes (Center for Progressive Reform 2007)

William Funk
May 14, 2010

- The Truth About Torts: Using Agency Preemption to Undercut Consumer Health and Safety, A Center for Progressive Reform White Paper (2007) (with co-authors Sidney Shapiro, David Vladeck, and Karen Sokol)
- The Rise and Purported Demise of *Wong Yang Sung*, 58 Admin. L.Rev. 881 (2006)
- Intimidation and the Internet, 110 Penn. St. L.Rev. 579 (2006)
- The Same Sex Marriage Debate in the United States, DAJV (German-American Lawyers Association) Newsletter 2/2005, at 49
- Political Checks on the Administrative Process, in A Guide to Judicial and Political Review of Federal Agencies (ABA Press 2005)
- The Federal Advisory Committee Act, in Major Acts of Congress (Macmillan 2003)
- Government Management of the Administrative Process, in A Blackletter Statement of Federal Administrative Law, 54 Admin. L. Rev. 1, 76 (2002)
- When is a Rule a Regulation? Marking a Clear Line Between Nonlegislative Rules and Legislative Rules, 54 Admin. L. Rev. (2002)
- Pesticides, Chapter 7 in ENVIRONMENTAL AND NATURAL RESOURCES LAW (Oregon State Bar 2002)
- A Primer on Nonlegislative Rules, 53 Admin. L. Rev. 1321 (2001)
- The Court, the Clean Water Act, and the Constitution: SWANCC and Beyond, 31 Env. L. Rep. 10741 (July 2001)
- Constitutional Law in DEVELOPMENTS IN ADMINISTRATIVE LAW AND REGULATORY PRACTICE – 1999-2000 (ABA Press 2001)
- Exhaustion of Administrative Remedies – New Dimensions since Darby, 17 Pace Env. L. Rev. 401 (2000)
- My Ideal "Casebook" or What's Wrong with Administrative Law Legal Education and How to Fix It, In a Nutshell (so to speak), 38 Brandeis L. J. 247 (2000)
- Wetlands, ENVIRONMENTAL LAW PRACTICE GUIDE: STATE AND FEDERAL LAW (Matthew Bender 1999)
- ENCYCLOPEDIA OF RELIGION AND THE CONSTITUTION (contributor for entries on Antonin Scalia, Pledge of Allegiance, Day of Prayer, In God We Trust, Standing and Religion, and Public Funding of Religious Education) (Garland Publishing 1999)
- Standing in the Supreme Court and Circuits, October Term 1997, 51 Admin. L. Rev. 343 (Spring 1999)
- Bargaining Toward the New Millennium: Regulatory Negotiation and the Subversion of the Public Interest, 46 Duke Law Journal 1351 (1997)
- Review Essay: Faith in Texts — Justice Scalia's Interpretation of Statutes and the Constitution: Apostasy for the Rest of Us?, 49 Administrative Law Review 825 (1997)
- The Federal Advisory Committee Act and Good Government, 14 Yale Journal on Regulation 451 (1997) (with Steven P. Croley)
- To Preserve Meaningful Judicial Review, 49 Administrative Law Review 171 (1997)
- Beyond Casebooks, Beyond Treatises: Administrative Law Readers (Book Review), 9 Admin. L. J. of Am. U. 361 (1995)
- Justice Breyer and Environmental Law, 8 Admin. L. J. of Am. U. 735 (1995)
- Reading *Dolan v. City of Tigard*, 25 Env't'l Law 127 (1995)
- Close Enough for Government Work: Using Informal Procedures for Imposing Administrative Penalties, 24 Seton Hall L.Rev. 1 (1993)
- Revolution or Restatement? Awaiting Answers to *Lucas'* Unanswered Questions, 23 Env. L. 891 (1993)
- Free Market Environmentalism: Wonder Drug or Snake Oil? 15 Harv. J.L. & Pub. Pol'y 511 (1992)

William Funk
May 14, 2010

Hurdles to Justice: Justiciability Issues in the Supreme Court -- An Outline, 6 Admin. L.J. Am. U. 286 (1992)
Rationality Review of State Administrative Rulemaking, 43 Admin. L. Rev. 147 (1991)
NEPA at Energy: An Exercise in Legal Narrative, 20 Env'tl. L. 759 (1990).
An Introduction to Administrative Justice in the United States, 43 Admin. L. Rev. (1990) (Book Review)
When Smoke Gets In Your Eyes: Regulatory Negotiation and the Public Interest -- EPA's Woodstove Standards, 18 Env'tl. L. 55 (1988)
The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law, 24 Harv. J. on Legis. 1 (1987)
Federal and State Superfunds: Cooperative Federalism or Federal Preemption, 16 Env'tl. L. 1 (1985)
The Exception that Approves the Rule: FDF Variances Under the Clean Water Act, 13 B.C. Env. Affairs L. Rev. 1 (1985)
Recent Environmental Law Casebooks: Searching for a Pedagogical Principle, 15 Env'tl. L. 201 (1984)

Other Articles:

[Quarterly articles for the Admin. & Reg. L. News entitled Supreme Court News, 1990-2004]

Oregon's Green Permits, Second Generation Issues Committee Newsletter, Vol. 3, No. 1 (October 2002) at 3

Waiting for Godot: Existential Musings on the Passive Virtues and *Suitum* [*v. Tahoe Regional Planning Agency*, 117 S.Ct. 1659 (1997)], NRLI News, Vol. 8, No. 1 (Summer 1997) 13

Section 404 Limitations on Wetlands Development, 1996 Mineral Law Series: Rocky Mountain Mineral Law Foundation 6 (1996)

More Stealth Regulatory Reform, Admin. & Reg. L. News 1 (Summer 1996)

Bennett v. Plenert: Using Citizen Suits to Enforce the Limits of the Endangered Species Act, 10 AdLaw Bulletin No. 7 (July 23, 1996) at 1

RIP ACUS, 21 Admin. & Reg. L. News 1 (Winter 1996)

Report Card on Regulatory Reform, 20 Admin. & Reg. L. News 1 (Summer 1995)

The *Other* Chevron Doctrine: When Court Decisions Only Have Future Effect, 19 Admin. L. News 6 (Fall 1993)

Clarence Thomas and Administrative Law, 12 J. Natl. Assn. Admin. L. Judges 40 (1992)

"Dear Mrs. Souter...", The Advocate 15 (Autumn 1991)

Justice Souter and Administrative Law, 16 Admin. L. News (Winter 1991)

Due Process -- Substantive or Procedural?, 15 Admin. L. News (Spring 1990) at 9.

William Funk
May 14, 2010

New Regulations on Federal Paperwork, Admin. L. News (Summer 1988) at 3.

Paperwork Reduction Act Amendments, Admin. L. News (Spring 1987) at 3.

Alive and Well in the Leviathan State, The Advocate, Autumn 1984, at 14.