

HAROLD HASTINGS BRUFF

Nicholas Rosenbaum Professor of Law
University of Colorado at Boulder
Kittredge Loop Drive, Campus Box 401
Boulder, CO 80309-0401

Office: (303) 735-3536
FAX: (303) 492-1200

Email: bruffh@Colorado.edu

Education: College: Williams College, B.A. 1965
Major: American History and Literature
Phi Beta Kappa

Law School: Harvard Law, J.D. 1968, Magna Cum Laude
Editor, Harvard Law Review, 1966-68
Teaching Fellow in Expository Writing, Harvard College

Bar Membership: California, admitted January, 1969

Military:

Lieutenant, U.S. Coast Guard Reserve, 1968-1971.
Assistant District Legal Officer, Twelfth Coast Guard District, San Francisco
Principal Duties: Prosecution and Defense of Courts-Martial; Counsel in Administrative
Discharge and Physical Disability Boards

Government Service:

Senior Attorney-Adviser, Office of Legal Counsel, U.S. Department of Justice, November, 1979 to June, 1981 (Special Commendation for Outstanding Service, July 2, 1981). Principal Duties: Staff legal adviser to officers of the Department, the White House, and the Executive Agencies on issues of constitutional and administrative law.

Consultant to the Chairman, President's Commission on the Accident at Three Mile Island, September-October 1979.

Academic Positions:

University of Colorado, Dean and Professor of Law, 1996-2003; Charles Inglis Thomson Professor of Law, 2003-2011; Nicholas Rosenbaum Professor of Law, 2011 to date; Gilbert Goldstein Research Professor, 2011-2012.

George Washington University, Donald Rothschild Research Professor of Law, 1992 to 1996
University of Texas, Professor of Law, 1983-85; John S. Redditt Professor of Law, 1985-92
Arizona State University, Assistant Professor of Law, 1971-73; Associate Professor, 1973-76; Professor, 1977-79

Visiting Professor: University of Minnesota, 1974-75; University of North Carolina, 1977; University of Virginia, 1981-82; U.C.L.A., 1982-83; American University (Bronfman Chair of Administrative Law), Spring 1988

Courses Taught (1971-2016):

Current Courses: Administrative Law; Constitutional Law; Legislation and Regulation; Comparative Constitutional Law Seminar.
Past Courses: Regulatory Reform Seminar; Environmental Law; Local Government; Federal Courts; Land Use Planning; Private Real Estate Development; Conflicts of Law; Texas Government; Torts

Publications:**Books:**

Balance of Forces: Separation of Powers Law in the Administrative State (Carolina Academic Press, 2006)

Bad Advice: Bush's Lawyers in the War on Terror (University Press of Kansas, 2009) (recipient of the Roy C. Palmer Civil Liberties Prize, awarded by the Chicago-Kent College of Law, and of the Millstein Award for Faculty Scholarship, awarded by the University of Colorado Law School)

Untrodden Ground: How Presidents Interpret the Constitution (University of Chicago Press, 2015) (This book was the subject of a book program at the National Constitution Center in Philadelphia in April, 2015, and of the 23d Rothgerber Conference at the University of Colorado Law School in October, 2015. Reviews include Martin S. Flaherty, 65 Case Western Law Review 881 (2015), and Peter L. Strauss, id. at 1151. The book is also a History Book Club selection.)

Casebooks:

THE ADMINISTRATIVE PROCESS (with Glen O. Robinson and Ernest Gellhorn) (fourth ed., 1993, Supplement 1995)

SEPARATION OF POWERS LAW (with Peter M. Shane) (3d ed. 2011) (first version was THE LAW OF PRESIDENTIAL POWER, 1988)

Articles, Essays, and Book Chapters:

"Unconstitutional Conditions Upon Public Employment, New Departures in the Protection of First Amendment Rights," 21 Hastings Law Journal 129 (1969)

"Arizona's Inferior Courts," 1973 Law and the Social Order 1

"Presidential Exemption from Mandatory Retirement of Members of the Independent Regulatory Commissions," 1976 Duke Law Journal 249

"Judicial Review in Local Government Law: A Reappraisal," 60 Minnesota Law Review 669 (1976)

"Congressional Control of Administrative Regulation: A Study of Legislative Vetoes" (with Ernest Gellhorn), 90 Harvard Law Review 1369 (1977)

"Presidential Power and Administrative Rulemaking," 88 Yale Law Journal 451 (1979)

"Judicial Review and the President's Statutory Powers," 68 Virginia Law Review 1 (1982)

"Legislative Formality, Administrative Rationality," 63 Texas Law Review 207 (1984)

"On the Constitutional Status of the Administrative Agencies," 36 American University Law Review 491 (1987)

"Independent Counsel and the Constitution," 24 Willamette Law Review 539 (1988)

"Public Programs, Private Deciders: The Constitutionality of Arbitration in Federal Programs," 67 Texas Law Review 441 (1989)

- “Presidential Management of Agency Rulemaking,” 57 *George Washington Law Review* 533 (1989)
- “Separation of Powers Under the Texas Constitution,” 68 *Texas Law Review* 1337 (1990)
- “Specialized Courts in Administrative Law,” 43 *Administrative Law Review* 329 (1991)
- “Coordinating Judicial Review in Administrative Law,” 39 *UCLA Law Review* 1193 (1992)
- “That the Laws Shall Bind Equally on All: Congressional and Executive Roles in Applying Laws to Congress,” 48 *Arkansas Law Review* 105 (1995)
- “Executive Power and the Public Lands,” 76 *U. of Colorado Law Review* 503 (2005)
- “The Incompatibility Principle,” 59 *Admin. L. Rev.* 225 (2007)
- “The Story of *Dames & Moore*,” in *Presidential Power Studies* (Christopher Schroeder and Curtis Bradley eds., 2008)
- “Presidential Power Meets Bureaucratic Expertise,” 12 *U. of Pennsylvania Journal of Constitutional Law* 461 (2010)
- “The Advisory Function of the Attorney General in the United States,” in *Public Sentinels: A Comparative Study of Australian Solicitors-General* 209 (Gabrielle Appleby, Patrick Keyzer & John Williams eds. 2014)
- “The President and Congress: Separation of Powers in the United States of America,” 35(2) *Adelaide Law Review* 205 (2014)
- Chapter One, “The Availability of Judicial Review” in *A Guide to Judicial and Political Review of Federal Agencies* (John F. Duffy and Michael Herz eds., 2d ed. 2015)

Selected Short Pieces:

- L. Levy & K. Karst, *Encyclopedia of the American Constitution*, 1986 and Supp. I 1992, two entries
- L. Levy & L. Fisher, *Encyclopedia of the American Presidency*, 1993, ten entries
- “Can Buckley Clear Customs?” 49 *Washington & Lee Law Review* 1309 (1992)
- “The Federalist Papers: The Framers Construct an Orrery,” 16 *Harvard Journal of Law & Public Policy* 7 (1993)
- “Introduction, Congressional Process Symposium,” 48 *Administrative Law Review* 33 (1996)
- “Bringing the Independent Agencies in from the Cold,” 62 *Vanderbilt Law Review En Banc* 63 (2009), and “On Hunting Elephants in Mouseholes,” *id.* at 127 (2009), available at www.vanderbilt.edu/lawreview/enbanc/roundtable.
- “Book Review, Placing Your Faith in the Constitution,” 45 *Tulsa Law Review* 583 (2010).

Work in Progress:

- “The President’s Faithful Execution Duty,” 87 *U. of Colorado Law Review* --- (April, 2016).

Congressional Testimony and Statements:

- Improving Congressional Oversight of Federal Regulatory Agencies, Sen. Comm. on Government Operations, 94th Cong., 2d Sess. (1976) (testimony, 64-71)
- Hearings on Congressional Procedures, Subcomm. on the Rules and Organization of the House, House Comm. on Rules, 95th Cong., 2d Sess. (1978) (testimony, 84-95)
- Regulation Reform Act of 1979, Subcomm. on Administrative Law and Governmental Relations, House Comm. on the Judiciary, 96th Cong., 1st & 2d Sess. (1980) (testimony and statement, 783-91, 817-29)

The Supreme Court Decision in *INS v. Chadha* and its Implications for Congressional Oversight and Agency Rulemaking, Subcomm. on Administrative Law and Governmental Relations, House Comm. on the Judiciary, 98th Cong., 1st Sess. (1983) (testimony and statement, 214-33)

Legislative Veto After *Chadha*, House Comm. on Rules, 98th Cong., 2d Sess. (1984) (testimony and statement, 613 -31)

Canada-United States Free Trade Agreement, Subcomm. on Courts, Civil Liberties and the Administration of Justice, House Comm. on the Judiciary, 100th Cong., 2d Sess. (1988) (testimony and statement, 104-124, 215-219)

Canada-United States Free Trade Agreement, Senate Comm. on the Judiciary, 100th Cong., 2d Sess. (1988) (testimony and statement, 98-118)

Alternative Dispute Resolution by Federal Agencies, Subcomm. on Administrative Law and Governmental Relations, House Comm. on the Judiciary, 100th Cong., 2d Sess. (1988) (testimony and statement, 95-104)

Congress and the Administration's Secrecy Pledges, Subcomm. on Legislation and National Security, House Comm. on Government Operations, 100th Cong., 2d Sess. (1988) (testimony and statement, 113-28)

Legislation Relating to Reemployment Rights, Senate Comm. on Veterans' Affairs, 102d Cong., 1st Sess. (1991) (testimony summarized in Sen. Rept. 102-103, 130-31)

The Role of the Council on Competitiveness in Regulatory Review, Senate Comm. on Governmental Affairs, 102d Cong., 1st Sess. (1991)

Ethics Process, Joint Comm. on the Organization of Congress, 103d Cong., 1st Sess. (1993) (testimony and statement, 30-33, 63-72)

Application of Laws and Administration of the Hill, Joint Comm. on the Organization of Congress, 103d Cong., 1st Sess. (1993) (testimony and statement with David Frederick, 43-46, 220-49)

The Legislative Reorganization Act of 1994, Subcomm. on Rules of the House, House Comm. on Rules, 103d Cong., 2d Sess. (1994) (testimony and statement)

Public Service and Government Consulting:

Association of American Law Schools, Administrative Law Section, Executive Committee 1982-85; Chair, 1985

American Bar Association, Section on Administrative Law and Regulatory Practice, Congressional Process Committee, Chair, 1992-96; Task Force on Applying Federal Legislation to Congress, Member, 1993-95; Council Member, 1998-2001

Administrative Conference of the U.S., member of delegation to U.S.-Ukraine Administrative Law Conference, Kiev, Ukraine, March 20-27, 1993

Consultant, Office of Juridical Council of the Government of Thailand and the Asia Foundation, Bangkok, Thailand, June 27-July 2, 1994

Consultant, Administrative Conference of the United States, 1975-92; ABA Commission on Law and the Economy, 1977-78

Member, Judicial Advisory Council, State of Colorado, 1996-2008.

12/1/2015