Should your career include service with the staff of an association?

Jobs in administrative law are conventionally regarded as falling into three categories of employment: (1) government, (2) academia, or (3) the private sector. Private sector careers in administrative law are likewise usually viewed as being either with law firms or with their client businesses or NGOs. However, some of the most purely administrative law positions in the private sector are with associations—nonprofit groups that represent professionals, businesses, government agencies—even other associations. While some associations are solely devoted to trade shows and other sorts of member services, many, including most of those large enough to have in-house counsel, are at least partly devoted to advocating their members’ interests before government agencies. Lawyers in these associations have an unparalleled opportunity to participate in administrative processes.
There is almost literally an association for every type of business, profession, or other organized activity in the United States. The *Directory of Associations* lists over 45,000 of them, and the Washington, D.C., phone book has multiple hundreds of business listings that begin with “National” or “American.” While most associations are located in the Washington, D.C., area, others are headquartered elsewhere, particularly in the capitals of larger states. Trade associations and other business groups—from the U.S. Chamber of Commerce to the Air Transport Association to the National Association of Broadcasters—tend to hire the most lawyers for advocacy positions, but so do associations of professionals, such as the American Medical Association and the American Bankers Association. The public sector is also represented by a raft of highly specific groups, with separate associations advocating on behalf of governors, mayors, cities, counties, county officials, state environmental commissioners, and state and local air pollution control officials, for example. Numerous demographics are also represented by associations, many of which are so well known that the news media just refer to them by their initials (e.g., AARP, NAACP).

While some lawyers in these organizations focus on the business side of the association (e.g., contracts, human resources, and counseling to avoid antitrust or tort liability), among associations that employ more than one or two lawyers, most of those lawyers are advocates who basically practice administrative law full-time. They file comments in rulemaking proceedings, litigate against or in support of rules or other agency actions, testify at agency hearings, public meetings, and “listening sessions,” and meet informally with agency staff in a myriad of contexts. Besides interacting with line agencies within the executive branch, association lawyers usually also interact with the Office of Management and Budget (OMB) and the Government Accountability Office (GAO). Most also do some congressional lobbying or support lobbyists.

It may not be too much of a stretch to say that much of the innovation in administrative law grows out of the interaction of agency lawyers and the association lawyers with whom they interact on a regular basis. A substantial purpose of associations, especially in Washington or state capitals, is a form of diplomacy. Political administrations and association management may come and go, but the career staff of associations generally seek to maintain an ongoing and productive relationship with
agencies—after all, to be effective, associations cannot afford to be seriously at odds with their agency counterparts.

Associations tend to work issues on a continuing basis—from inception to conclusion, or continuously in the case of issues that never go away. In particular, they are usually present at the creation of agency initiatives, since part of their job is to be aware of and shape them—and sometimes to instigate them. As a result, association lawyers have a synoptic view of, and continuing role in, the issues in which they are most heavily engaged. Associations do hire law firms to represent them, particularly in litigation and other high-stakes matters, but the high cost of outside counsel relative to salaried in-house lawyers means that association lawyers do the great bulk of legal work for their employers. Because they generally have the job of hiring and managing outside counsel, moreover, association lawyers often can choose which work they will do and which they will outsource, which can allow them to keep the work they find most interesting. What’s more, association lawyers more commonly serve as the external point person on an issue than do their government counterparts, who typically have a more distant and internal relationship to outsiders. Thus, it is not an overstatement to say that associations can provide an unequaled opportunity to have a hands-on, in-depth administrative practice.

Because they are so steeped in the issues on which they work, and are among the very first practitioners to work on them, association lawyers frequently know more about these issues than just about anyone else. As a result, they are often invited to speak at conferences or to write articles about their work. Indeed, in many cases part of their job description is to marshal the legal arguments underlying their clients’ positions and to present that work to interested publics.

Association lawyers who engage in administrative law are almost always specialists in one or more areas. This means that they rarely are hired right from law school, but more commonly come from firms, the government, or client organizations. In my own case, the Washington office of the firm for which I worked was imploding. As I was casting about for a new job, a colleague who had worked for the Chemical Manufacturers Association told me about a vacancy there, adding, “You’re a policy wonk; you’ll love it over there.” When I considered that the work I was most eager to do at the firm was the policy-formulation work that we did for client associations, I figured that going in-house at
one of them would allow me to do that work full-time, rather than only when they chose to farm it out to me. I was right.

Law firm lawyers usually have to take a sizeable pay cut when they move to an association, but the difference in salary can be outweighed by the chance to be paid to be a policy geek, the (relatively) greater job security, the more predictable schedule, and the freedom from billable hour expectations. Government lawyers do not face such a dramatic change in salary, but may like the greater independence and chance to do hands-on advocacy. Corporate counsel typically move to associations for job security reasons, or because they need to relocate. While job security at associations is no longer what it once was, it is still better than at member companies.

Even after lawyers go to work for an association, it may be a while before it dawns on them that they are no longer just the specialists that they were previously—they are now also administrative lawyers. I recall distinctly when I stumbled onto this fact: I was skimming through a copy of Administrative & Regulatory Law News that belonged to the lawyer in the next office, and as I read over the titles of the various articles, I suddenly realized: “This is what I do!” Sure, I was an expert in the definition of solid waste, but what I did day in and day out was to debate things like the legal status of Resource Conservation and Recovery Act (RCRA) guidance documents and whether we should file an anticipatory deadline suit to compel an agency to meet a statutory deadline that it was certain to miss—classic administrative law issues.

In my experience, associations are most often looking to fill entry-level legal jobs with lawyers who have three to five years of practice in a field. Lawyers in that range who have come to the realization that they are—or would like to be—administrative lawyers are thus pretty well positioned to find an association job. Prior experience doing things like drafting comments on rulemakings or filing ratemaking petitions is obviously desired, and so people without that sort of experience ought to be looking for opportunities to get it.

Law students who think they might even possibly want to do administrative law certainly ought to take at least the basic ad law course—it is probably just as essential as evidence is to a would-be trial lawyer. Such students should also take classes in substantive regulatory topics that they find interesting, whether that be energy, telecommunications, or securities regulation. Absolutely take classes taught by practicing adjunct faculty, if your law school has any of these.
many fields—environment is a good example—what leads a person to be interested in a field may have little relation to what one does in practice. Many would-be environmental lawyers are immediately put off when they find that the laws and rules involved rival those of the IRS in length and complexity. But if you can say you’ve actually done some of that work and still get a kick out of the idea, you’re an attractive candidate to prospective employers. Clerking at an association is also an excellent idea, both for the experience and because former clerks are the principal exception to the rule stated earlier that associations typically do not hire right out of law school.

Associations do not offer enormous potential for promotion within the organization, since association legal staffs are usually not huge (infrequently more than 10). But lawyers often move up to nonlegal senior management jobs: vice president for government relations, CEO, and so on. There is also a great deal of mobility between associations, and a mid-level lawyer at a large association can often become the general counsel at a smaller association.

Association law practice is a truly hybrid activity. If you want to be a quasi-academic but not teach, or a quasi-government lawyer without having to work for the government, or to work for your client but still have quasi-clients, an association job may be just the thing for you.

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