Careers in Administrative Law & Regulatory Practice

Professor James T. O’Reilly

Contributions from 19 leaders in government-related practice
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Fred Emery and Andrew Emery
This book is dedicated with great thanks and respect to Al Turnbull, Career Services Dean Emeritus, University of Virginia School of Law—an avid fisherman who gathered minnows like us, nurtured our growth, found the anglers, and released the trophy fish of tomorrow.
Preface

Looking for a job is a chilling experience, fraught with some level of anxiety for virtually everyone. As a young law student in pre-Internet days, I recall the tense moments of waiting for “the call” to arrive. The sense of anxiety was almost universal; the sight of two classmates—each the child of a sitting Supreme Court justice—nonchalantly doing the crossword puzzle in the back of Civil Procedure class reminded me that a lucky few were exempted by family or other circumstances from “predestined” jobs. But for the remainder of our sweating colleagues, this was a nerve-wracking experience. In this book, to help alleviate some of your concerns, we offer a seasoned explanation of a rich source of satisfying employment.

This book is our way to give back some of our collected experiences to you, the future leaders of the field of administrative law. We, the members of the ABA Section of Administrative Law & Regulatory Practice, want to relieve you of misconceptions or mistaken anxieties about our area of law practice. Each of us has worked hard to excel in our respective corners of administrative law. So we describe our field, show you our passion for excellence, encourage you to consider its benefits, discuss entry strategies, and empower you to read further source materials. In the later portion of this book, the “Becoming . . .” essays provide individual personalized examples of the career path, its demands, its rewards, and its entry points. It has been humbling for me to know so many exceptional lawyers who share this desire to extend a hand up as you consider climbing our ladder of professional success.

It’s normal to feel confused about “where would I fit in” to a field this broad and deep in opportunities. Think of administrative law careers as a matrix of vertical columns representing federal, state, and local legal roles, and with horizontal columns representing fields of
regulation, licensing, enforcement, or approval. Somewhere inside that matrix are jobs that fit your needs and fill your aspirations to reach for satisfying and relevant work assignments that pay reasonably well for your efforts. Think of twenty-first-century legal careers as a slalom ski slope, in and out of public sector jobs, law firms, in-house positions, and elsewhere. Achieve mastery of your type of legal work, and the expertise you will develop is readily transferable elsewhere. Work hard, have faith, have courage, try and fail, and get up and try and succeed.

Are you a person of ideas? Publish, present, speak, blog, or tweet—but get your ideas launched and debated. Those fresh ideas are the source of reform and positive change; the career efforts that move big ideas are the best careers for the benefit of society and the law in general. Recall the eulogist who famously said, “Some see the world as it is, and ask why; he saw the world as it could be, and asked why not?” This book is for all those of you who will ask the “why not” questions of the next several decades in our area of the law. Yes, decades are ahead of you, and our society needs people like you to make a positive difference. Let’s all get to work.

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Introduction

The goal of this book is to help you to launch your career in our field of practice, the interaction of law with government that is usually called “administrative law” or “regulatory practice.” Along the way, we would like to introduce you to the steps that may lead you to success in administrative law and government careers.

We recognize, as professionals in this field, that there are many varieties of administrative law practice, and many of those will be illustrated in this book. But ultimately it’s your choice of which career direction you pursue. Our purpose is to help your career by enabling you to see the many helpful dimensions of the roles that lawyers play in governance, administration, legislating, and operating our complex federal, state, and local systems.

As leaders of the American Bar Association Section of Administrative Law & Regulatory Practice, we have among our ranks law firm practitioners, government agency counsel, federal appellate and district judges, administrative law judges inside federal agencies, non-profit group advocates, state officials, legal educators, solo practitioners, and many others. We are culturally,
ethnically, and politically a very diverse group of talented and dedicated lawyers.

Our goal as administrative lawyers is to help our clients successfully operate within a complex governmental system, in a way that fosters positive change. We want to improve the system of governance while helping our clients succeed with their lawyerly goals and objectives. Improvements in the legal system are an important part of the accomplishments of which lawyers in the administrative and regulatory agency practice can be proud.

So who cares about having the best and brightest enter this field of law practice? Perhaps you had not heard of our field before entering law school. Without your being aware of it, administrative law has helped shape your life. Your high school dealt with No Child Left Behind rules; you may have had to qualify for a guaranteed student loan in college; Housing and Urban Development (HUD) rules affected your home mortgage; your car was designed to meet a set of mandatory safety standards; state insurance rules affected your family’s medical care; your doctor was licensed by a state administrative body; and even the Internet on which you and we rely was influenced by federal and state telecommunications and utilities agency rules. Uniform and fair administrative provisions have made it simpler for you to obtain a license, receive a permit, and so on. The air traffic system works on a regulatory framework. You are subject to a set of safety regulations on your bicycle, appliances, food, home construction, and workplace fire exits. Where there’s a rule or government policy that intersects with your life, administrative lawyers have been part of framing that policy. We lubricate the wheels of government.

Administrative lawyers make a conscientious effort to standardize and systematize the way in which government agencies operate. Behind each positive step to improve service to the public, there are dozens of lawyers in the administration and many more outside who have had some role in the development of this positive improvement. “Participatory democracy” requires prudent lawyers and conscientious advocates.

Lawyers inside the regulated products or services companies, and the lawyers who counsel those companies, can be said to “operate and cooperate.” These lawyers help the complex bureaucratic system to operate, and they help the agencies and the affected persons to cooperate for the common good. Not everyone is happy with every lawyer’s
performance of this role. Indeed, the adoption of a viable government regulation prohibiting certain actions probably displeases more people than it delights. That’s the nature of regulating private conduct in our democracy. The rule of law is not divine or omniscient, and flaws in the system sometimes are evident.

Please use this book as an informal guide; listen to the advice of professional career planning advisors; and plan your efforts wisely. So when you are considering a law career path, remember this: “Administrative lawyers *rule!*”
What is administrative law? In general, it is the system our society uses to perform governance functions within the framework of statutory decisions about policies. So lawyers in our field observe, evaluate, assess, or sometimes oppose the implementation of certain statutory provisions adopted by Congress or the state or local legislative body. “Rules are us!”

The work that administrative lawyers do is so very diverse that we cannot fairly claim to illustrate all types of administrative practice in this small book. But we do explain how lawyers came to have the roles of

- writers of regulations,
- decision makers on adjudications,
- prosecutors of regulatory violations,
- and the like.

Regulations by federal and state agencies number in the tens of thousands. The writing of a regulation requires legal drafting ability, or an experienced career employee using a lawyer-approved template for the repetitious insertion of standardized provisions. For example, the
Coast Guard temporary regulation closing a channel during a construction project follows a precise pattern; in those exceptional cases, the lawyer has prepared the template and no lawyer is required for the routine publication items. A rule requires a statement of statutory authority being applied, a description of the scope of persons or things covered by the rule, the content of the prohibition or requirement that is being imposed, and an effective date. The Administrative Procedure Act of 1946 has a bare-bones provision in Section 553; many court decisions since then have fleshed out its requirements.

Making individualized decisions by adjudication is like the more formal court proceedings; these are particular to one entity, brought against the named entity by the agency (or sometimes the agency is acting as the judge between two warring entities), and they deal with existing or past actions. The role of the adjudicator is to impose a punishment, grant or revoke a license, or award or deny a benefit. In making the decision, the adjudicator may be like a judge—sometimes given powers as an administrative law judge to make important agency decisions—or may be acting as a routine official who examines the paperwork and grants the requested administrative permission.

The closest that administrative agency attorneys will come to the work of litigators is a specialized form of litigation in which the agency prosecutes a violator of its rules for a civil penalty, sometimes in federal district court. Most frequently, the prosecution work for the agency is done by a U.S. attorney (or the state equivalent in a nonfederal action by a state regulatory body). The administrative lawyer has to prepare the case, discuss settlement, arrange the witnesses, and produce the “record” of the agency’s interactions with that violator.

Is this field satisfying? Is the administrative lawyer doing important work for the client? Is it fun to be involved in administrative law? Yes, yes, yes. If you like helping veterans or indigent disabled persons to gain public benefits, these are psychic rewards that make the work fun. Often, the satisfaction of winning a benefit or license for a client brings appreciation and positive thankfulness, and that is fun. The private sector client work on administrative issues tends to be steady, and that satisfies part of the lawyer’s economic anxieties. Sometimes the client’s regulatory claim or case cannot prevail for reasons beyond the lawyer’s control, and that loss is never fun. On balance, though, it’s a very rewarding career field.
Students entering law school have observed lawyers on television for 20 years; it is natural that many come to class thinking that they will be happiest as aggressive trial litigators. Perhaps another career path awaits some of them. Without denigrating the role of litigators, we have found that more interesting sustained work, and more steady public benefit, is achieved by administrative lawyers who make the complex governmental system function every day. Our democracy moves on its bureaucracy; we are the specialists who succeed by lubricating the gears of public policy selection and implementation.

Glamorous and sexy? Not!

A great job by a regulatory agency lawyer is virtually invisible to those outside. Successful administrative hearing advocacy wins benefits for a client but draws no headlines. Prevailing against the agency at a hearing to preserve the license of a company is a must-win situation for that company, but the public won’t see it happen. Low news media visibility and the complex detail of these disputes diminish the external visibility of the lawyer’s work. The reasonable prospect of success for the lawyer comes
over the long term. A successful challenger against a state or federal agency makes great results for the client but few headlines. Some young lawyers’ expectations of dramatic success seem out of touch with what the administrative law practitioner is able to accomplish. Negotiating to “no action” with an aggressive regulator can be regarded by the client as a terrific win.

The work that administrative lawyers do is comparable to that of many other lawyers in the drafting of precise and detailed agreements, the negotiation of settlements, and the navigating of specific paths or means to accomplish an objective for a client or for the government agency. It will please some law students to hear that you need not be a flamboyant, hard-charging attacker to be an effective participant in administrative dispute resolution. You have to understand the process, you have to build the administrative “record” of documented support, but you won’t have dramatic live cable TV interviews on the courthouse steps to show your parents. For many young lawyers, growing one’s recognition for competence and achievement of client goals is satisfaction greater than the “15 minutes of fame” to which some will aspire.
Part 2
Career Paths

What career paths are available to the new lawyer? Several routes into a successful career are available for the energetic new lawyer, and more will evolve in particular cases.

1. Working as a government attorney, counseling the agency staff and administrative officials, is the most likely entry point for this career.

2. Taking a policy rather than a legal role, becoming the administrative official yourself, is the second likely route. Operating as a client can help you in your later roles as an advocate.

3. There are many who start as a political aide, assistant, or appointee to a particular legislator and move from personal staffs to committee staffs to the agency overseen by that committee.

4. Private law firms hire lawyers with administrative expertise all the time, and you may be one of those who profits from the growth of regulatory agency work in a new administration; some lawyers profit from the growth, others profit more by resisting that growth.
5. You may work inside a corporate entity and have legal or regulatory responsibility for maintaining the corporate relationships to the administrative agency.

6. There may be jobs available in advocacy organizations, collectively known as NGOs or nongovernmental organizations. These jobs are training grounds for future roles inside the agency you study, future roles in which you may be able to improve the functioning of the agency.

7. Finally, you may go into lobbying or direct support roles for the lobbying or advocacy organizations as one who prepares the presentations and data for the congressional or state legislative presentations.

If we had to guess, most law graduates who enter administrative law fields will become entry-level government lawyers; the second-largest number will join law firms and prepare for careers with specific types of administrative processes, such as energy utility regulation.

But can YOU fit in here somewhere? We can confidently affirm, YES YOU CAN. There is a place in this diverse set of subtypes of practice where administrative law needs intersect with your personality and your lifestyle preferences. One of these seven places may be right for you at some point in your 40-year working life as an attorney. You may start close to home in a county attorney’s office as the zoning and licensing advisor; you may move to the state capital to advise a legislative committee; you may work for the state attorney general on consumer protection cases; you may join the regional office of a federal agency that does work you have admired; your hard work might promote you to national headquarters legal advising; you may enter a private practice that specializes in the area of law within which you developed expertise. Note the “may, may, may”; the term will reflect the many possibilities with which you can shape your own career. Ambitious? High energy? Need a role balanced with family responsibilities? Want travel? Want to make a difference in your corner of the world? Care about the public health, welfare, safety, and so on? Yes, you can fit into administrative law careers.
How Do I Enter This Field?

The opportunities for young lawyers in administrative law, government, and regulation are remarkably robust, even in a down economy. A 2009 study by the Partnership for Public Service of 35 federal agencies foresees a need for about 24,000 lawyers in federal government positions in the coming years, to replace retirees. Additional growth in private, state, and local legal jobs is likely to come from economic recovery efforts of the federal government.

The federal economic agencies tend to take on additional responsibilities when dealing with financial problems such as a major recession. The complexity of operating government’s response to the economic problems may be the basis for a “stimulus” job in which the lawyer facilitates the movement of funds and the contracts that will spend the stimulus, or works with the government to help new banks acquire the more troubled banks, or otherwise assists in the remedial efforts. The government needs bright and energetic lawyers who can actively respond to the fiscal problems.

The primary way in which one enters conventional government jobs had traditionally been the civil service
examination. These are not used for jobs that are titled attorney, counsel, counselor, and the like, because these job titles typically are deemed to be exempted from civil service protections. “Easier come, easier go” is the consequence of accepting a job that is exempt from civil service testing.

Government tends to be a selective employer in some positions, and a rather lax one in others. Entering the legal job pool for government agencies usually involves a search for that especially relevant or attractive job opening, which may or may not be made available on the agency’s website. The majority of U.S. government entry-level jobs that become available are listed on the website http://USAJOBS.gov. But not all jobs will be there, and not all openings for appointments to legal positions are readily searchable by the would-be applicant.

Quite often, someone in your wider network who is in touch with friends, faculty, mentors, and others will get the first word that an opportunity is available. Often, these networks include American Bar Association members and their colleagues who are on the relevant subject matter committee, such as transportation, homeland security, and so on.

The career center of a law school may have ways of obtaining listings for public positions, government agency application sites, and the like. These are discussed in Chapter 20. Remember that the ratings for law schools put pressure on deans to increase the percentage of recent graduates who have found jobs, so the job you get inside government is a win for you and a win for your law school’s team.

For state law positions, go to the state capital with an alumnus of your law school as a guide and ask any of the lobbyists whom she or he knows about how they entered the field of governmental law. These specialists in watching the state agencies have a vested interest in “their” candidate being selected by the agency that regulates their clients; if you have some pre-law professional contacts in your state capital, such as the state teachers’ conference for a former schoolteacher, explain to them your areas of interest. When a state capital is located in a smaller city, word travels fast of a bright applicant’s interest, and your contacts might call you for that state environmental law or education policy position that will be officially open next week. Alumni networks can be very helpful at this informal communication.

Please, please don’t wait for the ideal legal jobs to be splashed in the newspaper’s Sunday jobs section. In relatively few cases, the
administrative agency will list its job in classified advertising—or even more infrequently, in a significant display advertisement, in legal newspapers, where the potential audience may have an interest in applying for a more senior status within the agency legal office. The entry-level positions are virtually never advertised by display advertising, though they may be in a classified advertising section of a significant news media source.

Internships are a very popular entry point, if you can afford to give up income and pay rent while spending unpaid time as an apprentice at the agency. In some cases, law students who were successful interns in the administrative agency during a summer break were asked to join the agency. Getting the internship is more difficult if your law school does not have a pipeline into Washington among its alumni.

Another route of entry is less objectively measured. Political campaign volunteers also have a higher potential for connecting with policy jobs than with legal positions inside the agency. When the president and the appointing entities are sharing the political perspective for change, this candidate brings to the job at least a hope for appointment to “special assistant” roles. Governors, mayors, and elected officials use administrative agency positions for their trusted allies; you may learn a great deal from being the indispensable campaign aide who then enters public service. A dose of humility and a sense of perspective will help you adjust to the new role, once you have had the door opened for you.

Does politics decide who gets all of the local administrative law jobs? Politics with a capital “P” counts much more in local job hunting than in most federal entry-level law positions. In some cases, the head of the federal agency and its general counsel are politically appointed by the president, and his staff will receive names of appointees from the political campaign staff of the president. Be ready to volunteer in campaigns; the campaign aides of the incoming state attorney general tend to do well in their placements.

But, for the most part, entering this field is hard work. You have discovered that finding a job is a job in itself. An aspiring federal lawyer will have to mount a multipart campaign to find the specific agency that needs his talents and then has to use all available networks to get into the agency manager’s field of awareness. Self-education about the job and the decisional officials; a clean and accurate resume; a relevant writing sample or published article; lots of persistence; and a sound
record of achievement in a good law school program are the key elements that make a difference for you.

Can you achieve entry into an honors program? Some of the best and brightest lawyers may be brought into the agency through the honors programs of the Department of Justice, the office of general counsel of certain agencies, or as presidential management fellows. (The reputation of the Department of Justice honors program will recover from the political scandal of the Bush administration, which reportedly made some very bad judgments in altering its selection process.) In general, honors program opportunities are the most selective route of entry, and they open the best doors into policy roles.

Finally, watch the news for changes inside government. New agency or new program office creation brings with it a need for more attorneys. If a new agency has begun with a new role or new function, such as protecting the financial consumer from fraud, then the new agency may be an attractive venue for the placement of young lawyer applicants.
State agencies need lawyers; elected state attorneys generally hire many bright, young, politically ambitious lawyers. Your author is a veteran campaigner who has seen the phenomenon of “October partisans”; young lawyers wait for the potential state attorney general to show a lead in the polls, and then they suddenly appear as eager volunteers just before the election. It is transparently opportunistic, but for some it lands the job they had sought.

Turnover is constant in some roles in state government, but, frankly, is glacial in others. The employee’s pension gains attractiveness over time and preserving the pension creeps into career decisions after about a decade of state government employment.

Entering state government during a budget recession may be a career “wrong turn.” States are more stressed than the federal government because of their inability to raise taxes and, in many states, their inability to have a budget that is not totally balanced. Layoffs are not unknown but are still below the levels experienced in very large transactional law firms in a recession.
Want to stay close to parents or family, and still do interesting legal work? There are tens of thousands of legal positions in local governments, including cities, school districts, counties, townships, and special districts. Most of the administrative law work is a sideline in smaller entities; many local prosecutor offices also have civil responsibility and will provide administrative law counsel to their clients. Zoning, licensing, benefits, planning controls, health restrictions, inspeclional authority, interpretation of federal rules, and so forth will all fall to you.

These positions sometimes are competitively determined on a merit selection basis. Most likely, the majority will be affected by “political genetics,” that is, by personal and family relationships of the applicant with the appointing officials. That is not to say that all government legal jobs at the local level are these so-called patronage jobs. But it is much more likely that a local selection of a replacement for a retiring government lawyer will be the person who has an existing personal relationship with the affected officeholder, or has strong ties of friendship or family with the elected officials of that local government.
It is rare for the very qualified but geographically “outside” candidate to prevail over a “hometown” applicant. Within the hometown contenders, the closest related person who meets the minimum qualifications may be the most likely to be appointed. In larger cities with a tradition of professionalism in selection, this is less so, but the geographical and numerical majority of local government law positions build on aspects of familiarity, for better or worse.
How Do I Prepare?

The best way to prepare for a job doing the work of the administrative lawyer is to take the basic class on administrative law, and excel in that class. Write a paper if you can, on a topic that interests you. Then enroll in whatever related seminars or courses deal with the administrative process, such as securities law, environmental law, food and drug law, banking law, and related specific classes. Become proficient in concepts and in language of the administrative process.

To “stand out from the crowd” in competitive interviews for a government position, you should prepare a class paper or law review note as a writing sample, hopefully one that indicates knowledge of the administrative process, in your particular factual situation or dealing with a controversial court decision on a topic of regulation. This writing sample would indicate that you have the capability of understanding what the administrative agencies are doing, and why their work was closely scrutinized on appeal. Recognize that this writing sample may stand out from the crowd if it explains a point of law impacting that agency. Such a paper may be of great interest to the administrative agency managers, who review dozens or hundreds of law student applications. You were the one
who took a fresh look at the problem they have struggled with—they want a creative problem solver like you on their team. Of course, they may disagree with your paper’s conclusions, but they will be flattered that you thought deeply about the intellectual underpinnings of their work at the agency. These insights show a person who will dedicate efforts to improving the work of that agency—making you an excellent candidate.
Comparisons

How does administrative law compare to the more familiar first-year courses of civil litigation, torts, constitutional law, or criminal law?

The administrative law field is a complex hybrid of several disciplines that have been affected by the growth of the government bureaucracy. The bad news: it is a puzzle; you must convincingly show the prospective government employer that YOU can assemble the right answer. The good news: it is a puzzle that deters less well-prepared competitors from succeeding in their search for that job.

There is no one “recipe” for success. A little applied constitutional law, a little torts, good writing ability, diplomacy, and so on are all good foundations. You need to use your best efforts as a student in the administrative law class to integrate these lessons. Once you have maximized your grades in all of these courses, you’ll be able to pull together a résumé that says to the potential government employer that you are ready to go to work and that you understand the sophisticated interactions of various interests, which mark a successful administrative law practitioner.
This is not a field that uses drama and all of the tools of civil practice work trial advocacy, since most frequently the federal agencies are not bound by the rules of civil procedure or trial evidence when they are using adjudication methods other than court proceedings. Rulemaking may be bitterly fought with hundreds of adversaries, but it is not considered to be “adversarial” decision making. Some knowledge of First Amendment and Fourth Amendment jurisprudence helps. But this is not a field that will regularly stretch your ability to make constitutional law arguments, since quite often those constitutional arguments are largely irrelevant to the day-to-day work of the administrative agency. Most of the time, the agency operates within its well-defined sphere of powers; and those whom it regulates understand and can deal with its rules, within a finite statutory set of authorities. Constitutional law knowledge helps when the challenger argues the agency has acted unconstitutionally in taking certain actions. Few such attacks are successful.

Beyond the law school courses, any past learning can be beneficial to your administrative law career, if you build upon constructive experiences. But the best courses could be any one class, if the professor recognizes that administrative decisions are an important part of the legal landscape. If your class uses role play, join in the decision making—learning what motivates a change in the agency rules might be useful. Not all problems can be solved in court, and it really helps to understand how administrative decisions made without litigation can assist your side.
In sports, training of athletes for baseball and football, or football and track, may be usefully done in what is known as cross-training. In the same way, the skills of administrative lawyers are very useful in other fields. Perhaps you have the skills that facilitate your starting work as part of the regulatory team, the community development team, or the licensing review team inside a federal or state agency.

Coming into federal agency work, you will bring a history of work experience along with advocacy skills, writing and research skills, attention to details, and so on.

Use this cross-training to your advantage when you interview. Coming to a state or local legal shop, you understand licensing because you have received a license after going through an application process. Your knowledge of telecommunications, or coal mining, or vaccines, will grow as you become more adept at legal counseling of those who regulate in those product or service fields. You will excel as an assistant attorney general in consumer protection because of your time with a consumer advocacy organization; you will excel in state banking commission legal office roles because you worked in a bank before entering law school.
When you are inside the agency or working closely with the regulators, you will develop a useful understanding of the agency systems, how the systems operate, and what the details will be for a program or regulatory operation. So you cross-train as an aviation specialist, learning both adjudication and aviation law; you cross-train in the food industry counseling role, studying both the Food and Drug Administration (FDS) and the details of the rule-making process. The growth you earn from this is limited only by your willingness to study and grow along with your clients.

The best administrative lawyers come to fully understand the operational aspects of the client agency’s business. Federal Aviation Administration (FAA) lawyers should spend time in airports and repair shops; Department of Transportation (DOT) lawyers should visit truck inspection stations and meet terminal operators and shippers.

So, don’t be shy—stand out from the applicants for the administrative agency legal position by saying, “I was a beneficiary of what you do...” I was an organic farmer, I am a licensed pilot, I was a railroad worker, I was a licensed practical nurse, I spent a summer on barge loading at an expert grain terminal, I am a medical research assistant, AND so I appreciate the importance of what this administrative agency is doing.
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As someone who recently made partner on a part-time schedule, I am living proof that an administrative law practice can offer the opportunity for a successful legal career with a reasonable work-life balance. An administrative law practice depends more upon developing substantive expertise than logging a vast number of hours. While it takes time to develop that expertise in what can be highly specialized practice areas, attorneys who gain such knowledge can deliver significant value to their clients and their firms within schedules that can be relatively reasonable and flexible. With a wide variety of subject matters from which to choose, it is easy to find an area of administrative law that is of personal interest, which also can contribute to a feeling of balance between one’s professional and personal life. These features help make
a career in administrative law highly rewarding yet not utterly all-consuming, allowing an attorney time for family, friends, hobbies, and other interests.

**MY STORY**

Upon returning to work after having my first child, I realized that I might need to rethink the best way to manage my legal career and my desire to spend more time with my daughter. I am fortunate to work for a very family-friendly firm that allowed me to take a year-long maternity leave and return on a part-time schedule. When I returned, I was welcomed back onto the large, complex litigation matter on which I’d been working, but when the matter soon settled, I found that I was not excited about the prospect of joining another large litigation case. Because I would be working a reduced schedule compared to my colleagues, I wanted to ensure that I would deliver value to the firm in terms of my expertise, as I knew I would not distinguish myself in terms of the sheer number of hours I billed. I was also concerned about the possibility of extensive travel and unpredictable hours that can be an inherent part of a litigation practice in any large law firm.

An administrative law practice seemed appealing both because I could become an expert in a field who’d be highly valued even on a reduced schedule, and because it seemed to me that the administrative lawyers in my firm worked more predictable schedules than those of the litigators or corporate attorneys. Both turned out to be true. I’ve now been a food and drug lawyer practicing part-time for eight years and was recently made an equity partner. Even on a reduced schedule, I have gained expertise that enables me to serve my clients at a high level of sophistication and to speak at industry seminars and client training sessions on issues in my field. Meanwhile, I have also enjoyed considerable time with my three children, never missing a school event or important milestone. I remain at the firm at which I started practicing, politely declining the scores of headhunter calls seeking attorneys with my expertise, but welcoming that affirmation of the value of my knowledge and experience.

**SO MANY CHOICES!**

A quick scan of the titles of the Code of Federal Regulations reveals the wide range of administrative law practices available to attorneys—from
Essays by Administrative Law Veterans on What You Need to Know

aeronautics to wildlife regulations, and everything in between, including banking regulation, election law, energy law, telecommunications, and virtually all areas the government reaches. The variety extends not only to subject matter areas but also to the range of professional options in which to practice in these arenas: law firms, government agencies, in-house at corporations or trade associations, on congressional staff, and in public interest or other nongovernmental organizations.

For me, the first step in making the transition was to choose from the broad array of administrative law practices available in my Washington, D.C., firm. I considered our trademark, patent, and health care practices, but ultimately joined our food and drug practice because my firm has one of the leading practices globally in this area and because it suited my long-standing interest in food, health, and nutrition.

A PERSONAL CONNECTION

Finding a legal practice in a subject in which I already had an interest has certainly contributed to my enthusiasm for my work and has made me a more effective lawyer as well. My subscriptions to five cooking magazines not only advance my culinary hobby but also help me spot and understand trends in food, diet, and health that my clients are also facing. And on numerous instances in conversations with clients and consultants, I’ve had occasion to discuss food-related books I’ve been reading that also resonate with these colleagues. I’ve bonded with a client’s public relations expert over Julia Child’s My Life in France and shared anecdotes from the biography of the White House pastry chef with the head of a food trade association. These exchanges are rewarding both professionally and personally, demonstrating to clients my genuine interest in, and commitment to, what it is that they do and enhancing my own enjoyment of my work. I know this is also true for my colleagues in other administrative practices, such as transportation lawyers who never outgrew their love of trains!

Administrative law practices can also seem more “real world” than other areas of legal work. I love seeing in print an advertisement on which I’ve provided regulatory advice, or a food label that bears a health claim for which I helped obtain approval from the FDA. Also, it’s easy to explain to my kids what it is I do all day: “See this cereal box? Mommy helps companies make sure they put the right information on the box, and helps them figure out the right way to tell people about how eating nutritious foods can help them stay healthy.” And for those
school events where your kids bring you in to talk about your profession, mine’s allowed for great fun. We looked at the U.S. Department of Agriculture (USDA) Food Guide Pyramid on food packages and then built our own “pyramids” out of foods in the various food groups. I bet those transportation lawyers come up with some pretty fun ideas too!

A STEADIER, MORE FLEXIBLE SCHEDULE

For the most part, administrative law practices seem to offer more predictable schedules than do other areas of the law. Client emergencies certainly arise, but because these practices tend to be more advisory in nature, it can be easier to predict the coming week or to establish reasonable expectations about one’s schedule. Advisory matters tend to be shorter, taking a couple of hours, days, or weeks, depending upon the issue or inquiry, rather than months or years, as can be the case in litigation, for example. So even when a matter is hot or a crisis emerges, the extended hours needed to resolve the issues generally don’t last too long. While the particular matters can vary on any given day, in my experience a pattern has emerged about the mix of daily work, with some relatively quick answers to smaller questions, some extended work or deeper analyses on more significant matters or in order to guide longer-term strategy and planning, and some preparation for calls or meetings with clients or agency personnel. Our practice also often provides regulatory support to litigation or corporate teams, delivering substantive expertise and guidance on lawsuits or deals involving food and drug company clients. While such work can put us onto the deadlines faced by those other practices, the regulatory counseling role is still rather limited on these matters. The nature of an advisory administrative law practice, therefore, can provide a more balanced schedule than in some other practices that involve very large matters over extended periods of time.

The advisory nature of an administrative law practice also can mean that much of the work can be done anytime, anywhere. No need to travel for depositions, hearings, closings, and so on, although of course there are meetings at agencies and at clients’ offices. You can research, write, and call from virtually anywhere. For example, I generally work from my home office one or two days a week, and my ability to serve clients is not impaired at all. When I want to leave the office early or come in late for a family event, I can make up whatever I need to do at home in the evenings. Technology has clearly made this possible in a
number of areas of practice, but advisory administrative practices seem particularly amenable to flexibility of place and time. I’ve found that even administrative agency personnel have availed themselves of such flexibility. For instance, I once called an agency official at her office number, which apparently rolled over to her home line, because I heard children’s music and she said, “That’s *Caillou* (the children’s television program) in the background. My child is sick and I’m working from home today.”

**JOB SECURITY**

We have seen over the last year that practicing administrative law can help insulate a lawyer from the ebbs and flows in the economy. In the latest downturn, when many firms were laying off attorneys in corporate, real estate, and litigation practices, the firms with sizeable administrative law practices seemed either unaffected or considerably less troubled by the economy. Companies must comply with government regulations regardless of the economic environment. And as is the case right now, an economic downturn can lead to more, not less, government regulation. The need for regulatory counseling, therefore, remains strong.

One caveat is that the regulatory priorities can change with changes in government administrations, and at times in the past some administrative lawyers have needed to change gears when a new administration decides not to pursue enforcement in a particular arena. But the pendulum can swing back, as we’re seeing now in environmental law, for example. And certainly, comparable swings occur in private sector priorities as well, perhaps with less predictability than the shifts that can occur in administrative law with a change in administration every four or eight years.

For all of these reasons, an administrative law practice can be highly rewarding on both personal and professional levels. An attorney can find an area of law she truly enjoys and work with clients and colleagues who share her interests. It is possible to develop considerable expertise and experience to serve clients on a very high level without significantly compromising family or personal time. And a lawyer with relevant regulatory expertise is not easily replaced, and is likely to find opportunities in both the public and private sectors. Attorneys seeking a practice that is challenging and engaging while offering a reasonable work-life balance are encouraged to consider the variety of administrative law practices.
Becoming an Administrative Lawyer through Serendipity

Nancy Eyl

Should you be open to finding your career path by serendipity? The Random House Webster’s Unabridged Dictionary, 2nd edition, defines “serendipity” as “an aptitude for making desirable discoveries by accident” or “good fortune; luck,” as in the serendipity of getting the first job she applied for. Merriam-Webster defines “serendipity” as “the faculty or phenomenon of finding valuable or agreeable things not sought for.” For me, as well as for many others, finding a job practicing administrative and regulatory law within the government has been truly serendipitous.

MY SERENDIPITOUS CAREER DISCOVERY

At law school, I was a second-career student who had decided to abandon my academic career in Slavic languages and literatures for a career that I imagined would
more appropriately reward me for the rich experiences and skills that I had amassed over the years and (2) enable me to solve real problems for real people. On the one hand, I wanted a career that both provided broad opportunities and offered more material rewards for hard work and skill. On the other, I wanted to continue helping people, though in a more practical way.

In fact, I had chosen to study in Washington, D.C., largely due to my interest in public service, in particular, immigration and asylum law. It was a field that I believed would embrace my international experience and language skills. After participating in several internships and a law clinic, however, I began to see that my career goal needed to be informed by reality. In other words, for the first time in my academic career, I was in debt with student loans. Therefore, after some consideration—and after two summer clerkships with large firms—I decided to choose the large law firm route.

But the plan to work at a large firm was not to be. First, my firm, Thelen Reid, pushed up the start date from September to January. (At the time, this decision created news; Thelen was the first AmLaw 100 firm to delay start dates.) Though I was busy with exams and the New York bar, I scheduled a few informal interviews with other top firms. But some career counselors at Georgetown Law career services advised me (against popular opinion) that I was still bound to Thelen by NALP ethics rules, so I gingerly ended my search. Then, to my dismay, Thelen dissolved in October. Thus, just over one month after Lehman Brothers collapsed and the world financial crisis was declared, I found myself out of work, deep in debt, and in a world crisis. Needless to say, I experienced some desperate moments.

After hearing the news, I stayed put—in Madrid—and launched a job search via telephone and Internet from Europe. I called and e-mailed everyone I knew from Moscow to Tokyo. For months, I pursued job leads all the way to Doha. It was arduous and at times excruciating. In December 2008 people were firing, not hiring. But I was determined not to give up until I found a position that I felt would start my legal career off right.

In the end, serendipitously, I ended up being luckier than I would have been had Thelen not dissolved. After all the work, my job search paid off and yielded two good offers. I took the one with the U.S. government.
Though my current job with the government is not what I had planned (how could I have planned something this unique, I remind myself), my job offers me everything I was looking for and more. The work I do is challenging, exciting, complex, and fun. Involving administrative law, criminal law, foreign policy, and military doctrine, the work I do spans broadly across fields and exposes me to new knowledge every day. Further, the people at my agency are exemplary: hard-working, passionate, professional, and brilliant. Not only do I respect them as colleagues, but I also genuinely like them as people. And what’s more, I am able to pay back my lenders. Finally, by working for the government, I am able to avoid the initial years at a large firm. Though I thought I had wanted to start my career at a large firm, I now realize—through stories of government colleagues, law school friends, and even strangers on planes—I likely could have been miserable.

It’s wonderful to have discovered the government! And I am only at the beginning of my career. I can only anticipate with excitement the next post. Will it be with Justice? The Pentagon? Treasury? Commerce? Who knows?

THE SERENDIPITOUS CAREER DISCOVERIES OF OTHER ATTORNEYS

I compared notes to see if others had found the government by happy accident, as I had. They had.

One lawyer I know wanted to be a poverty lawyer. She served in the diplomatic corps in Vietnam, worked for a labor union, and applied to work for Ralph Nader. But eventually she found herself at the Department of the Treasury in the Office of Inspector General (OIG). Once inside the tight IG community, she discovered not only that she enjoyed the work but also that she wanted to stay. She then became the deputy IG for the Peace Corps; then counsel and assistant IG for investigations for the National Credit Union Administration, and later for the Corporation for Public Broadcasting. Finally, as an administrative law judge at the D.C. Office of Administrative Hearings, this attorney sat in judgment of unemployment appeals and other matters, such as appeals of eviction from public housing.

Though she has never practiced poverty law, she has enjoyed a long, fulfilling career with the government. She feels satisfied with her
career primarily because the OIG is “one place in government that provides real value to taxpayers.” Plus, the government enabled her as a single mother to spend more time with her son, gave her the experience she craved in public service, and, to this day, continues to offer her opportunities to contribute her knowledge and expertise part-time.

Another very successful lawyer had planned on a career in private practice litigation. But first she clerked with a state appellate court. While she entered private practice after her clerkship, she soon left to join a U.S. attorney’s office. Then she got sidetracked into doing policy at the Department of Justice (DOJ). A further sidetrack roped her into management. Since then, this lawyer has served in government positions entitled variously “counsel” and “manager.” Being a manager has made her a better lawyer, and vice versa. And she loves being able to build on her previous experiences and translate skills from one agency to the next, all the while working for the U.S. government.

Interestingly, this lawyer “never made a calculated career decision to practice administrative law.” She says, “There are so many opportunities in the government—you can’t even contemplate them before you get there and it is hard to explain to graduates what the opportunities are.”

For her, the key to serendipity was clerking after law school. Had it not been for that initial exposure to public service—and the fact that she got a call summoning her to a U.S. attorney’s office a few years after her clerkship—she would have stayed in private practice. Had it not been for serendipity, she might never have found the responsibilities and rewards of government service.

As this lawyer said, because the government affords such serious responsibility right away, it is ideal for new graduates. You, a new graduate, are in charge, while your colleagues from law school are reviewing e-mails and doing document review at firms. She clarified a good point, though: while it was serendipity to end up in government, it has been a matter of choice to stay. And that choice has largely been borne by the unique opportunities to advance into positions of authority, variously as manager or as counsel.

Another lawyer with a varied and distinguished government career wanted to be a criminal lawyer—a public defender—but he was from Chicago, where it was hard to break in. So he broke in the back door. He moved to Washington, D.C., to work in administrative litigation—black lung appeals—and met the deputy inspector general of the
Department of Labor (DOL) in the locker room of the gym they visited. This chance encounter led to his working as a legal counsel for the criminal investigators in Labor’s OIG. He has stayed in the IG community for over 25 years working for a variety of federal agencies, including the CIA, U.S. Postal Service, and the Special Inspector General for Iraq Reconstruction. Over time, he moved to nonlegal management positions, where he has run Human Resources and Budget and also oversaw 180 criminal investigators. Though he, too, has flitted back and forth between manager and counsel positions, he now mostly does policy and finds that immensely interesting.

While he admits that government work will not make one wealthy, he agrees with so many others that the government grants significantly more responsibility early on. This means, he said, that newly qualified attorneys will learn more through hands-on experience and get better training. Until their fifth and sixth year as big firm associates, his law school classmates were not even doing the same work he was doing his first year.

Finally, another highly successful and dynamic lawyer told me that he had wanted to serve the public, but did not know exactly how. He imagined that he would be a prosecutor or work in the private sector advising public entities. It was not until he clerked that he was exposed to the opportunities within the government. At a state attorney general’s (AG’s) office, he worked as general counsel to over 30 state agencies—essentially representing the entire public sector in the court system. Reviewing the cases while clerking and building relationships with the other attorneys in the AG’s office convinced him to stay within the public sector, something that he never thought would be possible or desirable while he was in law school.

The key, he said, was that he “got to make a difference quickly.” The key—again—was the clerkship. This lawyer believes that if it had not been for the clerkship, he would have entered the private sector and stayed, as many people do.

**SUMMARY**

The general consensus among the lawyers I spoke with was that (1) administrative law is far more interesting than it might sound to the law student, and (2) though they found their first legal jobs by serendipity, it was their choice to stay.
First, as one lawyer said, administrative law is “much more interesting than it sounds.” Though it sounds dry to work with the Administrative Procedure Act and the U.S. Code, in fact, these laws form the regulatory and litigious universe. They are the mechanics of the government. They guide how public policy is implemented. And public policy affects everything from disciplinary and enforcement procedures to trade regulations.

Second, the aspect of “doing good” evokes the point about choosing to stay with the government. Though these lawyers found their first legal jobs serendipitously, they stayed in government after discovering that administrative and regulatory government work allows them to fulfill their original dreams. They can do good, make a difference, and see results, while also enjoying fascinating, surprising, and continuous career opportunities.

I noticed that the dictionary entry after “serendipity” is the “serendipity berry,” also known as the “miracle fruit.” Indeed, there is something miraculous about finding work that is fulfilling, challenging, fun, and well paid, especially when one finds it purely by accident and despite the determination and resolve to find something different. It reminds me of that Garth Brooks song, “Unanswered Prayers.” Sometimes, if we are lucky, what we perceive as bad luck actually turns out to be good luck. Then we discover something more appropriate, fitting, and desirable than what we had originally hoped. I know that for me this is the case, and I wish every new graduate a similarly lucky, happy discovery.
Should you enter the field of administrative law from a practice specializing in environmental law?

My own legal career began in the early 1970s with the U.S. Environmental Protection Agency (EPA). At that time, the field of environmental law included not much more than several small-sized statutes and the common law of nuisance and trespass. The courts had yet to tackle review of the decisions of the EPA and other agencies and the complexities, both procedural and substantive, that ultimately came to typify most environmental lawmaking and litigation at the state and federal levels. Since that time, the statutes, regulations, and agency guidance issued by EPA and the Departments of Interior, Agriculture, and Energy, along with the Council on Environmental Quality and the Army Corps of Engineers (to name only a few of the administrative agencies implicated in the elaboration of environmental law) have grown into hundreds of
thousands of pages. The cases have also mushroomed, producing a huge body of law, though one that only scratches the surface of issues presented to the environmental practitioner. Some of the “big” issues of statutory meaning and the validity of agency regulations may have been resolved, but the nitty-gritty issues of statutory and regulatory interpretation that arise daily in environmental practice are rarely addressed by the courts.

The environmental practitioner of today is, in most instances, an administrative lawyer first and foremost. As a daily routine, he participates in

- agency rulemakings that impart content to the complex, but often unclear, language of environmental statutes;
- agency adjudications to impose civil penalties, cease and desist orders, or other sanctions or prohibitions;
- proceedings for judicial review of those rulemaking and adjudicatory processes; and
- citizen suits to enforce the law where the federal or state agency in charge has failed to act

among many other types of proceedings that require intimate knowledge of the regulatory process and the procedures that control and shape it.

You can begin your career as a lawyer in the environmental area in any number of ways: as a member of the legal staff of a federal, state, or local agency, with a nongovernmental organization (NGO) as a researcher or its attorney (e.g., Earth Justice, the Sierra Club, or the Environmental Law Institute), in an international organization like the United Nations, or as an associate in a law firm or with a corporate legal department (this list does not necessarily exhaust the possibilities for employment). Some federal agencies have regional offices (EPA does), so if you are not interested in Washington, D.C., as a professional home, you don’t have to start there even if federal agency practice attracts you. Also on the state level, the typical statewide environmental agency has local or regional offices outside the state capital. As a general rule, the central office of an agency focuses on policy decisions and adopts the agency’s regulations, while the regional or local office engages more in the day-to-day practice of communicating that policy and the meaning of those regulations to local entities, working with them to comply, and, if appropriate, commencing and handling enforcement actions.
Once your career begins, it can take any number of paths, both geographically and in terms of who your employer is. Often lawyers start with an agency or an NGO because of the important responsibilities they give even new lawyers on staff; they may later move on to work in the private sector with a law firm or company. On the other hand, it is not infrequent for an attorney in private practice to tire of the routine of dealing with numerous different clients and move into public practice with an agency or an NGO. Private attorneys who have practiced with distinction over the years (and even some who have not) can also be chosen for important appointive policy-making positions in federal and state environmental agencies. The “revolving door” operates at both the state and federal levels of government, with some attorneys moving back and forth between government jobs and private practice several times over a career.

The precise nature of the work involved, whether you are employed in the public or private sector, can vary tremendously and from day to day, for example: litigating an agency or citizen enforcement action in court or before an agency; negotiating the terms of a federal or state-issued water or air pollution control permit; filing comments on proposed agency rules; lobbying federal or state legislatures on pending bills or meeting with regulators to advocate changes in agency rules or the adoption of new rules; advising and drafting with regard to various business transactions, such as the purchase of property that may be contaminated by toxic waste or selling excess emission allowances in one of the many rapidly developing markets (domestic and international) designed to protect the environment for the lowest economic cost; and explaining to a client how its business may be affected by recently adopted legislation or agency regulations, to name only a very few of the multitude of challenging opportunities where you can employ your legal and other skills. Some of these efforts may focus on federal, state, or local law—or a combination thereof—but increasingly the law of other countries (e.g., the European Union) or international law is crucial to private and public sector practice. Globalization and environmental law are inextricably related.

Look for more income in private and corporate practice. Working for an NGO or for a federal, state, or local agency will inevitably pay less, though princely sums are not needed to entice attorneys to apply to them for employment given the job satisfaction that is commonly experienced.
In terms of navigating the typical law school curriculum in search of the optimal package of courses to prepare yourself for a career in environmental law, obviously a basic environmental law course and an administrative law course are essential, and so is a course in international environmental law (even for someone interested in purely domestic practice). If the school offers a course dealing with the legislative process and statutory interpretation, that is equally essential—you will spend most of your career dealing with the work product of legislatures, so you better know how they work and how courts treat statutes in litigated cases. Knowledge of basic corporate law is also important for a variety of reasons, and the law of nonprofit entities is increasingly relevant, particularly if you work for an NGO. (Just one example: there are significant federal tax limits on legislative lobbying by charitable organizations and an attorney for an environmental advocacy organization that is tax-exempt had better know them.) Courses in land-use planning, insurance, and civil litigation can also be crucial in environmental practice. Many environmental problems are the result of bad land-use plans (e.g., allowing development that destroys critical forestland necessary to maintain good water quality). The scope of insurance coverage for the cleanup costs of groundwater pollution caused by hazardous waste disposal is a much-litigated issue. Any student who wants to appear in court to litigate environmental cases for NGOs, private entities, or federal, state, or local governments (on the federal level, it is the DOJ that handles all such litigation with very few exceptions) has to have much more than the elemental knowledge of civil procedure gleaned from the typical first-year course on that topic.

Many schools offer environmental clinics and externships, and no student serious about environmental practice should graduate without one or the other on his résumé. Finally, environmental law is, by its nature, interdisciplinary. For example, if you litigate forest cases for a public interest group, you will have to know something about conservation biology (among other topics). Accordingly, you must acclimate yourself during law school to dealing with issues of science and economics. Taking a pure science course relevant to pollution control or natural resource protection and an environmental economics course is a great idea—no matter how intimidating they can seem at first to the typical law student who shied away from quantitative courses in college. (The ABA allows for up to six credit hours of non-law work
during a student’s three years at law school.) If you are timid about dealing with nonlegal materials in a classroom setting, just imagine yourself confronting the same material for the first time when your client’s business or even more important interests are at stake! In this regard, students interested in an environmental career should give some consideration to getting an advanced non-law degree that exposes them in depth to issues of policymaking and economics, along with the intersection of science and policy.

Whatever courses you have taken and whatever other training you have, however, you should realize that most environmental practitioners ultimately specialize in one or only a few substantive areas of environmental law (e.g., air and water pollution, natural resources protection, etc.). That is true because of the detailed body of rules that has developed in each of these areas and the impossibility of one person’s offering competent advice and representation with regard to all of them. However, despite the differences among the substantive bodies of environmental law, the principles of administrative law—both state and federal—have a core set of common principles and, often, implementing procedures. That’s why administrative law is so important an element of your legal education in light of the crucial relationship in the practice of administrative law to the development and implementation of environmental law.

Like most other employers, those seeking to hire someone into an environmental practice, either public or private, will clearly favor an individual who has shown commitment to, and experience in, the area both during and even after law school. Environmental law is not for everyone, and employers know that: it requires intense detail work in reading statutes and regulations (among other things), and a willingness to confront nonlegal materials. Moreover, environmental law is constantly changing, requiring significant effort to keep up to date, more so than in some other areas of practice. A job applicant seeking an environmental job without training in the area is unlikely to fare well; he presents a real risk to the employer of discouragement and dropping out and into another area of practice. Aside from taking the right courses, work during the summer as an intern at an agency or an NGO or as a summer associate at a law firm or on a company’s legal staff dealing with some area of environmental law can be crucial in distinguishing yourself from others. Some public agencies may favor those applicants who have already demonstrated a commitment to public interest work.
The legal staffs of federal, state, and local agencies doing environmental work are filled with persons who have devoted their careers to government service, and they like to hire persons who have shown the same type of commitment not only in their choice of courses, but, more importantly, in how they have devoted their non-classroom time.

How to find these jobs? Of course there are the traditional ways for law students, for example interviews with agencies, firms, and companies—at law school or at the student’s own initiative—that may have a significant environmental practice. And, of course, internships with agencies during the school year or over the summer give contacts that can be used to find out where the jobs may be opening up in those agencies. Several years ago, one of my students took a summer (paid) internship in Washington with EPA (a rare opportunity indeed); the next year, as a result of his experience and contacts, he accepted a choice job in the Office of the General Counsel dealing with issues of administrative law as they affect the agency.

Each agency generally hires its own personnel and advertises positions through government channels (see, for example, EPA’s website at http://www.epa.gov/careers), though there may also be a central employment office for the government as a whole (in the case of the federal government, it is the Office of Personnel Management; see its website for job hunting at http://jobsearch.usajobs.gov) that also maintains a register of job openings. Lawyers hired in the federal government tend to be “Schedule A” appointees who avoid the need for traditional competitive hiring procedures that apply to much of the federal civil service. Note also that the DOJ includes a large staff of attorneys who specialize in prosecuting and defending environmental suits for the U.S. government (see http://www.usdoj.gov/enrd/About_ENRD.html); many state attorneys general also get involved in environmental litigation (see Illinois, for example, http://www.ag.state.il.us/environment/envdivision.html).

Obtaining a job with an NGO or international agency may be the most difficult search to undertake; there is no central listing of job openings for those types of entities. There are a multitude of NGOs, some research-oriented, some focused on advocacy work involving legislatures and/or litigation. Searching the Internet may be the only way to get a sense of what NGOs and international environmental organizations exist, where, and what the respective focus of their attention is; some may post job openings on their web pages (though that is unlikely
from my experience). NGOs and international entities tend to be very selective since they have limited resources for staff, and the number of persons interested in working for them is very large indeed.

Finally, what about job satisfaction? From my experience, I am not aware of significantly more or less satisfaction with jobs in the environmental area at private firms and corporations than in other areas of the law. Turning to public practice, I have known quite a few individuals over the years who have worked with NGOs or for the government; they have tended to be excited with their work and have often made it a career. Wherever the employment, however, being an administrative lawyer dealing in the area of environmental law offers huge challenges and opportunities because of the complexity and importance of the subject matter, particularly in light of ongoing globalization that has particular impacts for environmental regulation (e.g., regulating greenhouse gas emissions).
Becoming an Immigration Lawyer

Jill E. Family

Should your career path include immigration law, a growing and important subset of administrative law?

In immigration law, it is all about people on the move. People are on the move all over the globe for a variety of reasons. A brilliant research scientist developing a cancer cure may want to work for a pharmaceutical company in another country. Or perhaps an individual fears for his life and desperately needs to relocate. The need to move could even be the product of love. An individual may meet someone from a different country and decide to move to be with that person. The motivations for wanting to move are practically endless. It is the work of an immigration attorney to know the laws that govern these desires to move. Because the decision to move is such a personal one and is almost always life changing, the work of an immigration attorney can be immensely rewarding.

The varieties of motivations to move reveal an unexpected aspect of immigration law. It really is not as narrow a field as it may seem. Digging a little deeper, one
discovers the practice of immigration law is quite diverse. To begin, there are private immigration attorneys representing those who wish to move and immigration attorneys who represent the government’s interests in either granting or denying permission to relocate. But even those differing labels do not fully represent the diverse ways to practice immigration law. Here are just some of the ways that attorneys practice immigration law.

Some represent corporate clients who need to move employees around the globe. In the United States, these attorneys need to be experts at applying the categories and quotas of business-related immigration permitted by Congress through the Immigration and Nationality Act. To assist their clients, these attorneys must work their way through a challenging application process administered by the government. Along the way, the attorney has the chance to learn all about the fascinating work of his clients. This is necessary because, to advocate for the client, the attorney must be an expert not only on the law but also on the work of the client. For example, if a client is developing a revolutionary new type of computer screen, the attorney must be able to translate the concept to the government adjudicators. The government adjudicators need to understand why the technology is so revolutionary and why it is so important to allow the client to relocate. An effective immigration attorney can make the difference between a corporation that achieves its personnel goals essential to its operations and one that does not.

Other immigration attorneys focus on those who have moved and want to stay, but the government seeks their removal. These attorneys find themselves litigating in immigration court in the United States, with potential appeals in the federal courts. In these cases, private attorneys and government attorneys argue whether an individual has done something that renders them deportable. Making these arguments requires strong statutory reading skills and often involves the ability to expertly analyze the U.S. Constitution.

A strong motivation to move is a fear of harm in one’s home country. Some immigration attorneys represent individuals in asylum cases, where such fear-based claims are adjudicated. Take Maria, for example. Maria’s father was killed in her native Colombia for refusing to help rebels fight against the government. After her father’s funeral, Maria received a note in her home that said, “You are next.” Is Maria entitled to refuge in the United States? An immigration attorney would
represent her through the application process, whose outcome, literally, could mean the difference between life and death.

Yet other immigration attorneys represent individuals who wish to join their loved ones. These attorneys facilitate happy reunions that allow people to live their lives as they wish. The reunion could be the result of new love, an adoption, or unifying a family after the immigration of one family member. As with all immigration categories, these clients need expert guidance through the application labyrinth established by the Immigration and Nationality Act.

The potential workplaces of the immigration attorney are also quite varied. Private immigration attorneys work in big firms, small firms, are solo practitioners, and work for nonprofit organizations. Immigration attorneys who work for the government work for various executive agencies, including the Department of Homeland Security, the DOJ, and the Department of State. Within the Department of Homeland Security, attorneys work for U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection. For example, within Immigration and Customs Enforcement is a corps of trial attorneys who represent the government in immigration court proceedings. Lawyers working for USCIS advise on the adjudication of benefit applications, like those seeking family reunification or the right to work. Within the DOJ, immigration attorneys make up the Office of Immigration Litigation (which handles immigration litigation in the federal courts) and also work for the Executive Office for Immigration Review (which runs the immigration courts and the Board of Immigration Appeals). Immigration lawyers working for the Department of State handle complex issues affecting U.S. consulates abroad.

Students interested in immigration law should begin by taking an immigration or refugee law course. With that background, students should look for any kind of opportunity to begin to work in the field. That opportunity could be through a law school clinic or an internship with a nonprofit organization. Or, a student may find a government internship, such as an internship at a local immigration court. A student may also find temporary employment with a private immigration attorney. The Internet resources listed on the following page will help to begin the search for a first immigration law job.

No matter the type of immigration law practice, all immigration lawyers know that their field is all about people. The constant
interaction with people on the move from all corners of the globe makes it an inspiring area of practice that offers many opportunities for professional fulfillment.

INTERNET RESOURCES

American Immigration Lawyers Association
http://www.aila.org/

Department of Homeland Security, U.S. Citizenship and Immigration Services
http://www.uscis.gov/

Department of Homeland Security, U.S. Customs and Border Protection
http://www.cbp.gov/

Department of Homeland Security, U.S. Immigration and Customs Enforcement
http://www.ice.gov/

Department of Justice, Executive Office for Immigration Review
http://www.usdoj.gov/eoir/

Department of Justice, Office of Immigration Litigation
http://www.usdoj.gov/civil/oil/index.htm

Department of State, Bureau of Consular Affairs
http://travel.state.gov/

ImmigrationProf Blog (which posts news and has gathered links to many other immigration blogs and other immigration resources)
http://lawprofessors.typepad.com/immigration/
Becoming a Food and Drug Lawyer

James T. O’Reilly

Should you consider a career in food, drug, and medical device law?

Only if you want lifelong learning; no two weeks alike; interesting and societally relevant work; fascinating scientists to meet and cutting-edge research to discuss; and a lively and changing field that keeps you interested and stretched as you try to adapt older laws to newer product challenges. Have you moved along the approval of an HIV AIDS drug? Have you kept counterfeit infant formula off retail shelves? Has the vaccine for a virus been moved swiftly because you helped the client overcome barriers? There are psychic rewards galore, and the money’s very good in most of the nongovernmental positions as well.

WHO’S A REAL FOOD AND DRUG LAWYER?

Who are the 600 or so full-time FDA lawyers in this country, and their 1,000 or so extended colleagues, and where are they located? There may be four subsets:
1. The largest number of true “FDA specialists” are in law firms in Washington, D.C.; New York, Atlanta, Indianapolis, and Chicago have a small number each, and southern California is slowly developing a base of private law firms with this specialization. Their practice is largely counseling and advocacy with FDA and related agencies such as the Federal Trade Commission and state attorneys generals’ consumer protection offices.

2. The FDA Office of Chief Counsel employs fewer than a hundred lawyers, all in suburban Washington. FDA also employs dozens more JD holders in the job title “regulatory counsel” or its equivalent, also in suburban Washington. There is a distinction between tradition and internal culture; lawyers who hold the regulatory counsel roles are not regarded with the same deference given to general counsel (GC) attorneys; structurally, GC attorneys are employed by the Department of Health and Human Services (HHS) general counsel, and not by FDA. FDA lawyers responsible for federal litigation are aided by the Office of Consumer Litigation in the Civil Division of the DOJ. Functionally, GC attorneys do all of the external and litigation work; regulatory counsel work on rulemaking and administrative tasks. These lawyers are not any better or worse as individual attorneys, but bureaucracy has its cultural distinctions, and the status differences are subtle but significant.

3. In-house counsel jobs at food, drug, cosmetic, device, biotech, and related companies in the FDA field employ many lawyers, a portion of whose time is spent on FDA issues. No real census of this population is possible since titles vary so greatly in corporate legal departments, and lawyers who have done FDA work well tend to move upward in their respective law departments into management roles.

4. An “all other” category exists, of private lawyers who have had some tangential contact with an FDA problem but have acquired no depth of expertise. Their law firm’s marketing website sometimes calls them FDA practitioners, but it’s a perilous stretch. The FDA field is so sensitive to nuanced errors in dealing with a dominant powerful bureaucracy that the propensity for one’s incorrect legal advice in this category to cause repercussions is very high. Behind many of the larger-firm
criminal convictions and seizures in this field (apart from truly
criminal individual cases) is some law firm’s malpractice expo­
sure for having given poor advice. Experienced lawyers from
other fields should strive to avoid malpractice and grievance
cases, and purported “FDA law specialists” with gaps in their
knowledge are at a heightened risk of both of those adverse
consequences.

FINDING THE JOBS

How are these jobs to be found? FDA is very selective, and its parent,
the HHS Office of General Counsel, posts its entry-level positions on
federal job websites discussed elsewhere in this text, and may offer sum­
mer intern positions at the FDA Chief Counsel’s office. Talk to your
law school’s alumni network in Washington. Former federal appellate
clerks or clerks to Washington area federal judges may enter their net­
work of advisors who can recommend them; sometimes lawyers from
other administrative agencies move to FDA. Each elective administra­
tion change brings a shift in the top two positions within the office, as
the HHS general counsel has the nominal power to select these two per­
sons when he is confirmed as head lawyer for the overall Department of
HHS. Hiring from a variety of backgrounds and experiences has helped
FDA; sometimes politically motivated lawyers have attempted to capture
higher policy roles, often meeting with disdain from lifetime FDA man­
gers. Career veteran lawyers do most of the supervisory work and are
most knowledgeable about institutional policies.

Sometimes, lawyers come to FDA after service with a congressio­
nal committee staff or a nongovernmental advocacy group. During a
recent administration, a chief counsel with an aggressive antiregulatory
agenda cut back drastically on enforcement; he and his political select­
ees drew lots of negative feelings before departing for industry. Their
zeal was a thankfully rare exception; over the century of FDA’s exis­
tence, the great professional work of the FDA chief counsel’s team has
required impartiality, writing skill, diplomacy, and sensitivity to sci­
ence, much more than political attitude. In general, applicants should
be exceptionally qualified as administrative law candidates, and leave
their political credentials outside. Neutral, science-based regulation
demands evenhanded lawyering with a minimum of preconceptions.
How can I start in a food and drug position outside of FDA? Excel in one of the law school courses on FDA law offered at one of about 25 law schools; these tend to be taught pro bono by adjunct professors with many years of successful interaction with FDA. Or win the cash prize in the annual Austern Writing Competition for law student papers on FDA law (http://fdli.org); attend ABA Administrative Law Section meetings to intersect with our very active FDA committee; publish a student paper in the *Food and Drug Law Journal*; or just be the best and brightest candidate for a large Washington firm and then request assignment to FDA projects that can gradually school you for the role of experienced FDA counselor.

**IS SCIENCE A PREREQUISITE?**

Are the lawyers in FDA practice all science-trained? No, a small minority are science-trained, with the majority of FDA practice situations involving close cooperation among the scientific consultants and the attorneys. Liberal arts graduates with excellent listening skills, strong reading comprehension, and polished writing talents will excel in these jobs.

A fine writer with legal and diplomatic savvy will trump a biochem PhD/JD who is full of personal zealotry on issues relating to FDA. The field has more than its share of marginal players known for their particular slant. Success is common for those who have earned peer respect for their good judgment and writing skills; unlike talk radio, your high volume and passion tend to turn off your audience in this sophisticated and high-stakes field. Learn and listen and study about this century-old regime; don’t be afraid to read more than your opponent does, and don’t rush to judgment. The career-making negotiation of my life as an FDA practitioner involved my awareness of an unreported case and a statutory set of preconditions to FDA action; their effective presentation blunted the plans of FDA’s enforcement lawyer and won a favorable settlement that had many millions of dollars in ramifications for the client. My 40 percent pay raise from the client more than offset the grumbling of a competitor’s lawyer who disliked our settlement.

**WHAT IS THE WORK?**

What does the FDA practitioner do? Meetings, e-mails, PowerPoint presentations, phone calls, text messages, policy drafts, and more meetings.
Successful FDA practitioners have these traits: their personality is balanced; they like to understand complex puzzles; they are eager to listen to advice; they talk carefully rather than glibly about the uncertainties of science; they present well at the inevitable meetings; they ask questions of clients; they look for precedents; they write well in papers, advocacy presentation, testimony, and so forth; and they are careful to rebut opposing views with facts. A telephone headset, a travel kit, and a laptop are essential since so much time is spent on informal phone negotiation inside a company, with advisors, and with FDA staff members. Inside FDA, the tasks include rule drafting and dealing with rulemaking comments; advising on penalty or debarment hearings; interpreting FDA norms for field offices; negotiating complex statutory interpretation issues with FDA science managers; and countless meetings with companies and their counsel who seek exceptions or approvals.

Outside FDA, advocacy by the FDA law specialist takes its usual forms, but there is extensive “institutional memory” to be mastered, guiding what steps are acceptable and what steps will hopelessly alienate the regulators. Avoid missteps: if you annoy the district compliance director, maneuver around a key approval official, or put congressional heat on the associate commissioner, then your “fame will precede you” the next time your client needs favors from the FDA. Several of the lawyer tasks are familiar if you have studied administrative practice: comments on FDA proposals, strategy meetings on pending approval applications, due diligence for acquiring a regulated firm, crisis management during recalls, advising on disciplining of potential whistleblower employees, and preparing witnesses for the defense in the exceptional court cases (which are typically settled early, before trial occurs).

**HOW SHOULD YOU PREPARE?**

What should a law student have before entering? Writing skills matter most; at one time a chemistry degree would be a great advantage, but today’s FDA is a crossroads of physics in medical devices, biotechnology in drug and vaccine ingredients, medical epidemiology for adverse event studies, biostatistics in approval decisions, and so forth; thus, the candidate should be prized for his listening and “quick study” capacity rather than for undergrad learnings. Patent law awareness helps in a few cases; history and an awareness of international trade issues is
quite helpful. Integrity is absolutely essential, since the realization that your client is defrauding the FDA should induce immediate withdrawal (after studying your state’s ethical code on lawyer withdrawals). It’s fine to fight hard on a statutory interpretation or factual dispute, but if you plan to be in this field for three or four decades, a “fraud on the FDA” case should be avoided at all costs, as the institution has a long memory for past deceptions. So run, do not walk, away from a scenario that tags you with a “fraud on the FDA” reputation.

CONCLUSION

This exciting, dynamic, and highly relevant field has been very good to me and to numerous other lawyers who are available to interact, encourage, and sometimes chastise the younger lawyers. FDA practice has broadened to include many more lawyers, a global set of clients, and a vastly larger financial stake for industry. But it still has many of the pleasant interactions and friendly rivalries that befit a relatively small bar. My 35 years in this field have aided me in bringing along numerous bright younger lawyers to serve the public’s interest, their client’s interest, and their careers. There will always be a need for good lawyers in this important field, commensurate with your skills and preparation. Will you be one of them?
Becoming an Election Lawyer

Liz Howard

There is nothing more exciting than a career in the area of election law! Although at first blush, a career in an area typically classified under administrative law may not sound thrill-a-minute, don’t let the loose classification mislead you. Election law is extremely fascinating and fast paced.

It is typically categorized as a practice area under administrative law because of the many federal and state agencies that regulate elections, candidates, and political organizations and their money. The two main federal agencies that regulate political activity and elections are the Federal Election Commission (FEC) and, to a much lesser extent, the Elections Assistance Commission (EAC). Innumerable other federal and state agencies are also involved, including the Office of Special Counsel, Department of Defense, FCC, and Internal Revenue Service (IRS).

These agencies regulate the activity of the countless individuals, candidates, lobbyists, organizations, unions, corporations, nonprofits, and committees (and all of their
employees, vendors, and volunteers) that influence or attempt to influence elections, legislation, and election disputes.

OUTSIDE INFLUENCES ON THE PRACTICE AND STUDY OF ELECTION LAW

Many other legal practice areas impact election law. Constitutional law provides the underlying framework for all restrictions on political activity. The intersection of constitutional law and election law leads to many fascinating questions. Have you ever wondered why disclaimers, such as the infamous Stand by Your Ad provisions found in the Federal Election Campaign Act (FECA) that result in your favorite candidate staring into the camera proclaiming, “I approve this ad,” are required on political advertisements when anonymous political pamphlets are such an important part of the history of this country? Is it constitutional for the government to limit the amount of money I contribute to a candidate for U.S. president? Does my vote count?

Nonprofit law continues to gain importance in the election law arena. Traditional nonprofit organizations are often interested in affecting election results and legislation. The political activities of these organizations are limited by the IRS. Some of the issues in this area arise because what the IRS considers political activity does not always mirror what the FEC considers political activity.

A separate concern that affects the actual practice of election law is public sentiment. The art of practicing election law involves the ability to recognize and predict public perception. In addition to ensuring that a client is complying with all applicable election laws, an advisor should be aware of the potential negative backlash from the press or certain constituency groups that might result from a particular course of action. Moreover, even if you know a regulation or statute is unconstitutional, a good advisor must consider the negative impact an enforcement action could have on the organization or candidate in a political sense.

Conversely, some knowledge of election law is necessary to ensure that once a candidate does win her election, she does not commit any violations after she enters office. For example, a member of the House of Representatives may not send campaign mail paid for by the federal government. This sounds simple, but should a mail piece lauding her impressive accomplishments while in office be considered campaign mail or merely constituent services?
ELECTION LAW TODAY

In general, the practice area and the academic study of election law issues exploded after the 2000 debacle in Florida. Although that incident specifically highlighted the problems with election administration, many other areas of election law are now receiving heightened scrutiny in the media, state and federal legislatures, and academic scholarship. You may have read about the recently enacted Honest Leadership and Open Government Act that regulates, among other things, “bundling” and the type of food available (e.g., only food that may be served on a toothpick) at certain functions where elected officials are present. The next hot topics that you are likely to read about include redistricting and potential changes in the regulation of contributions to federal candidates by corporations such as Wal-Mart, GlaxoSmithKline, or Exxon.

Obtaining practical experience in this field is quite easy. Regardless of your previous work or volunteer history, opportunities to gain valuable experience are available to you at your law school. Happily, regardless of where you live, there will be an election. There are always elections. Thus, there are always election disputes. Sometimes you don’t even have to leave campus. During my three years of law school, the Student Bar Association (SBA) elections resulted in a redo, a recount (for which we had no established procedures), allegations of campaign finance violations, and a major overhaul of the election regulations.

Certainly much more serious election disputes continue to arise frequently. For example, a local district attorney in a small, mostly white county recently concluded that students attending a historically black university located in the county were not eligible to vote in the county. On the flip side, the Justice Department filed a complaint against the New Black Panther Party alleging that its members engaged in voter intimidation at the polls in the 2008 presidential election. In general, election-law-related issues of varying interest and severity inevitably pop up at least once a week in the major papers.

OPPORTUNITIES AND CAREERS IN ELECTION LAW

There are many paths to a career included in the spectrum of election law. The most important step is to get involved. Somewhere in between reading for class, drafting the next memo, trial team tryouts, that next cite check, and volunteering to sell cookies in the lobby to help raise
money for the Election Law Society, you must find time to get involved in the election community. Here are a few potential opportunities:

1. Find a candidate that you believe in, call the candidate’s office, and offer to volunteer. If you show up and prove to be useful, no good campaign will allow you to waste your talents answering the phone.
2. Find opportunities with nonprofits that are politically active. These include organizations such as the National Right to Life Committee and MoveOn.org.
3. Find opportunities to work for nonprofits directly involved in elections, such as the Pew Center on the States, the International Foundation for Electoral Systems, and the Carter Center.
4. Find opportunities with a state, local, or national political party.
5. Volunteer to staff a poll, election hotline, or a boiler room on Election Day. Almost every state now has a network of attorneys who volunteer on Election Day to help ensure a smooth process (or at least great documentation if it isn’t smooth).
6. Find opportunities to work at firms with practice areas in election law, political law, or governmental relations.
7. Find opportunities to work at one of the many state or federal agencies that regulate political activity.

Here are some of the positions that involve election law:

1. Attorney for any of the following:
   a. Federal or state administrative agency regulating elections
   b. Election and/or political law practice area
   c. Governmental relations practice area
   d. Local, state, or national political parties
   e. Campaigns
   f. Politically active nonprofits
   g. Political action committees
   h. Legislative committees on elections
2. Lobbyist
3. Election administrator
4. Campaign manager

5. Executive director
   a. Nonprofits
   b. Political organizations
   c. Political action committees

6. Chief of staff

7. Chief financial officer
   a. Local, state, or federal campaign committees
   b. Local, state, or national political committees
   c. Political action committees
   d. Nonprofits

Obviously, the particular track that you take will dictate your day-to-day work experience. Your day might involve the following: approving campaign literature, ensuring a candidate has complied with rigorous ballot access requirements, researching an individual’s campaign contribution history, drafting campaign finance reports, opposition research, filing reports with the IRS, drafting election administration regulations, training staff in the area of compliance, reviewing voter registration forms for complete information, researching and ordering voting machine equipment, designing the layout of ballots, drafting employment contracts, composing memos on the effects of a recent court decision on current regulations, commenting on proposed regulations, bringing enforcement actions, volunteering at the polls on Election Day, defending clients, and so much more.

In conclusion, this practice area offers you an amazing opportunity to work for people and causes that you believe in and to earn a living. You may be exhausted at the end of every day, but you will sleep well every night.
“How do I get into law teaching?” That’s a question many students have asked me over the years.

If you have the right personality and skill set, law teaching is a wonderful career. It is one of the few jobs on the planet where you get a regular paycheck but you really have no boss. Once you have tenure, you can do pretty much what you want as long as you show up on time to meet your classes and avoid misconduct. Nobody will tell you what to write about, so you can choose whatever subjects interest you.

Control of your own agenda is very significant—in a law firm you must work on whatever the client needs (however distasteful or boring), but in law teaching you can chart your own professional agenda. Or you can work on whatever public service projects you find worthwhile (perhaps even serving as a committee chair or council
While you have to teach whatever classes are assigned to you, over the years you can probably migrate into subjects that interest you and ditch the ones you find boring. And a huge upside of law teaching is working with students; in general, they are very nice and highly appreciative for what you have to teach them. You can have a life-changing impact on many students by introducing them not only to the intellectual demands of the law and the norms of appropriate professional behavior, but also by helping to direct their careers on paths to improving society. You will be one of their most crucial mentors—by both your teaching and your example.

And let’s not forget the vacations and the ability to work when you want to. If you have child care responsibilities, for example, law teaching is a dream job.

Yes, law teaching has some downsides. You have to grade exams—which is quite distasteful—and you have to sit on time-consuming committees. You have to deal with academic politics, which can be brutal at times. But hey, there are downsides in every job and law teaching has fewer of them than most.

Law teaching, however, is not for everyone. Most obviously, you need to be able to teach competently. That means, when you explain things to people, they understand what you’re talking about. Unfortunately, some people lack this ability (perhaps you encountered some of them as law school teachers). You must be comfortable standing in front of a class and talking. Also, you must enjoy doing research and analysis and be a fluent writer. It’s very satisfying to know that your books and articles may influence others for years to come.

Some people fit the law firm profile much better than the teaching profile. These are people who need constant personal contact with other human beings. They thrive on conflict and they crave big wins. They enjoy and are good at “business development.” Law teaching doesn’t really satisfy those people. Law teachers spend most of their time alone in their offices wrestling with their computers. It may take a year or two to write a single article or a book, so you have to accept deferred gratification. Indeed, you have to be a bit of a recluse. In addition, there is little drama and no big victories or big losses. Also, some people want or need more money than you can make out of law teaching (although it
is more financially rewarding than it used to be, especially as compared
to other types of teaching).

OK, you’re sold. Now how do you actually get the job? It’s very
competitive, particularly in this era of tight academic budgets and poor
job markets in law firms. Let’s be candid—graduates of the more elite
law schools get most of the entry-level teaching jobs. There are thou­
sands of people each year competing for a few hundred jobs, and grads
from the top schools grab most of them.

If you’re still interested, read on. Your goal is to distinguish your­
self from the hordes of competitors, so hearken to Asimow’s seven
hot tips.

1. Get good grades. Really good grades. Law teaching jobs (espe­
cially at the rookie level) tend to go to students with high grades, proba­
bly the top 10 percent of the class. Obviously, a great deal also depends
on the ranking of the law school, so if you’re at a lower-ranked school
and do very well in your first year, think about transferring to a more
highly ranked law school. That would greatly improve your chances of
getting a teaching job.

2. Publish. Get on one of your school’s law reviews (preferably
the most selective one) and get an article published. This indicates that
you have both the ability and the drive to do legal scholarship. Law
schools expect their young faculty to publish, so you need to prove that
you have a scholarly vocation.

Choosing a good topic may be the toughest part of writing an
article. Aim for something theoretical or at least policy oriented.
Unfortunately, theoretical articles are more highly prized in academia
than doctrinal or practical ones. If you have a background in some non­
legal discipline before coming to law school (whether it’s philosophy,
economics, psychology, math, science, or whatever), try to draw on
that material in writing your comment, because interdisciplinary work
is more highly valued than straight law. Also, if you know what area
you’d like to teach (say administrative law), it would be good if your
comment was about that subject.

3. Get to know your professors. This pays off no matter what route
you take into law teaching. Basically, there are several ways to get a law
teaching job. The formal way is through the annual November hiring
conference run by the Association of American Law Schools (AALS), as discussed in tip 7 below. The informal (and much better) way is through personal contacts, the infamous “old boy’s [and old girl’s] network.” Obviously, you should try both ways, since they aren’t inconsistent. (See tip 6 for adjuncting as a third way into the profession.)

If you go the informal route, it is necessary to get your law school professors to make calls pitching you to faculty or deans at the schools where you’d like to teach. But the professors won’t do that unless they feel they personally know and like you. And if you’re going the formal route through the AALS hiring conference, it’s necessary to list professors as references—and they are worthless as references if they don’t know you personally.

So take the trouble to visit your professors’ offices during office hours, speak up in class, and take advantage of social networking opportunities involving the faculty whenever they arise. If you want to teach administrative law, make sure your admin law professor knows you well. Try to make that person an adviser on your student comment.

4. Get a judicial clerkship. A traditional way into law teaching is to come off a prestigious clerkship. So get the best one you can. During your clerkship year, try to keep publishing, in order to prove your scholarly vocation. Obviously, you should get on well with the judge, so he can make some strategic phone calls to law schools praising you to the skies.

5. Think about a graduate degree. Let’s say that you have no good teaching or clerkship opportunities coming out of law school and you don’t want to take a law practice job. It might help to get an LLM at a more highly ranked law school than the one that gave you a JD, especially if that LLM year gives you a chance to research and write a good article. Or think about a graduate degree in a different field, such as a masters or even a PhD in a subject other than law. A graduate degree in economics or philosophy, for example, can be a valuable credential in the hiring market, because interdisciplinary teaching and scholarship are very much in vogue. (This assumes, of course, that you can afford to stay out of the legal job market while waiting for that law school opportunity.)

6. Going into practice first? While practicing, try to do some publishing while preparing to look for a law school job. A solid published article is golden. Meanwhile, build up some solid experience in the area
you’d like to teach. (Of course, it helps if you can dispense with sleeping or a personal life.)

Try adjuncting. Go ahead—give the dean a call and inform him of your availability to teach a class in the afternoon or evening. Adjuncting pays very little and is a polite form of exploitation (it enables law schools to get classes taught at very little cost). However, it enables you to get some good teaching experience and to network with the dean and the faculty. Down the road, if you’ve been really successful in the classroom and have published an article or two, you’ve got an inside track for a full-time teaching job.

7. Game the AALS and ace your law school visits. The AALS hiring conference isn’t called the “meat market” for nothing. It’s brutal. There are thousands of people looking for jobs and everybody has to complete the one-page registration form. Law schools have time only for a dozen or two interviews, so some unfortunate soul has to paw through that huge stack of forms trying to find the few most likely prospects. So keep this in mind when you fill out the form—make yourself seem as desirable as possible and as distinguishable from the mob as possible.

Think carefully about your teaching preferences. If you can, make some discreet phone calls to faculty at your top few law school choices, and try to find out what they’re looking for. Then tweak your résumé to include those subjects.

Don’t limit yourself to constitutional law or federal courts, even if you love these subjects. So many other registrants will pick these subjects, and most law schools already have too many people who want to teach them. Administrative law is more saleable because there are fewer people who want to teach it (the reason for that is a different story!). Other related regulatory subjects are good too, like environmental law, legislation, tax, communications law, banking, energy law, or labor law. You’re hoping to nail the subject (or combination of subjects) that the law school is particularly looking to hire in. Be flexible too—indicate that you’d be happy to teach any first-year course (in addition to those you’ve already mentioned) since law schools often have holes in the first year they need to fill along with something more specialized. But don’t be too flexible; saying you’ll teach anything suggests desperation.

Also, be flexible in the location of the law school. If you’re willing to move to remote locales, you have a better chance of getting an
interview and an invitation for a full faculty visit than if you limit yourself to your own city or popular destinations like New York, D.C., or the West Coast. And after a few years you can always write yourself out of your first law school and into a more desirable locale.

When you make that full faculty visit, you’ll need to give a job talk. This should be very carefully prepared and very well delivered. Don’t read from notes. Speak in an informal and relaxed manner. Stick precisely to whatever time schedule you’re given. Be able to handle all questions gracefully (people are going to try to press you and even trip you up, so be prepared).

Finding the right topic for your job talk is tricky. Obviously, it has to be a subject you know very well (it helps if you have an article in progress on that subject). Look for a topic that isn’t too practical or doctrinal; the subject should be at least somewhat theoretical and policy oriented. Yet it shouldn’t be so technical or difficult that half of the people listening can’t follow it. You want your analysis to be provocative enough to elicit questions, but not so far-fetched as to bring your judgment into question. The goal is to come across as someone whom they’d enjoy having as a colleague and who can communicate effectively both to faculty and students.

Incidentally, your job talk should be well developed by the time of the AALS hiring convention. You should expect to be asked to summarize it and field questions about it at the screening interview.

So if you’re still interested in law teaching as a career, start preparing yourself beginning on your first day in law school and continuing after graduation. Don’t stop thinking about tomorrow, and good luck!
Should you seek a career path that includes administrative law work in local government settings?

The study of administrative law traditionally focuses on federal considerations, but administrative lawyers practice law at every level of government. What do administrative lawyers do in the local setting? At the city level, you find departments instead of agencies carrying out administrative functions, but just as at the highest levels of government, you find administrative attorneys assisting with department research, the drafting and enforcing of ordinances and rules, licensing and permitting, enforcing and adjudicating, rate setting, and legal representation before the courts if there is judicial review of city action. The complexity of each of these categories will differ with city or county size, resources, and structure, but these basic elements are always present.

Research is an important role. City departments are charged with taking ordinances passed by city councils, and ensuring that in their application they fulfill the
intended public purpose or deliver a particular benefit. A city depart-
ment will reach out to city residents to gather the information needed to
craft the city’s policies and programs, and will establish the procedure
for reaching the council’s desired result. This may be done through
conducting public forums, contracting private firms to conduct studies
or surveys, or collaborating with neighboring political subdivisions to
gather the necessary information. City attorneys play a role in this pro-
cess, whether it is by ensuring public forums with council are publicly
“noticed” in conformity with open meetings laws, drafting contracts
with private firms that comply with competitive bidding or minority
business solicitation considerations, or drafting contracts with public
entities that comply with the unique guidelines for interlocal contracts
between government entities. There is plenty of research work to be
done in state and federal laws and regulations, state attorney general
opinions, auditor reports, guidelines, and other materials that direct,
command, or guide choices to be made by local officials.

Drafting ordinances and rules is a visible and complex part of the
lawyer’s role. The results of staff research—or citizen lobbying in
many circumstances—can prompt city councils, like state legislatures,
to promulgate ordinances and resolutions or direct city departments to
do so on their behalf. This calls for the services of the city attorney, to
assist with the nuts and bolts of drafting a city law that complies with
a range of controlling legal considerations. From constitutions to due
process, from case law to state attorney general opinions, the city attor-
ney is challenged to draft city law that complies not only with binding
state and federal requirements but also with city code; city attorney
opinions; the actions of council, boards, subcommittees, or commis-
sions; and in some cases, a city charter. Once an ordinance is in place,
the city attorney assists the implementing department with rules to fill
in the details of everyday administration, consistent with the rulemak-
ing process. The city or county process for rulemaking operates under
state administrative procedure codes that often echo the notice and
posting guidelines of the administrative procedures that federal attor-
neyes know so well.

Enforcing laws that have been adopted is a constant role. A city
department will exercise discretion to enforce city ordinances and
department rules in a manner intended to effectuate council’s intent,
and to deliver the public service or benefit in a manner that efficiently
expends the tax dollar; it is taxes and economic growth that fuel the
city budget and that make every city employee’s job possible. The city attorney counsels staff and guides them through unique fact patterns, helps them to weigh considerations in their discretionary role, and assists staff with its public communications.

Licenses and permits are a constant source of legal business in municipal and county governments. In an effort to protect public welfare, cities implement licensing schemes to ensure residents are serviced by qualified professionals, and cities may issue permits to regulate a range of activities. A city department may, for instance, license lobbyists, oversee day care centers, or issue building permits. When a city steps in to authorize or regulate certain private activities via licenses and permits, the governance is done within constitutional and statutory constraints. Proactive counseling by city attorneys ensures that the program can survive any challenges to its due process, and the lawyer’s role preserves liberty and property rights that are involved in the grant or denial of such licenses and permits.

Adjudicating violations or negotiating compliance problems is another role. A city department must be able to enforce its ordinances or licensure process, and must be able to adjudicate violations. City attorneys assist departments with the proactive work of going out into the field and investigating applicants or complaints. A city department may license tow-truck drivers; once city staff identifies grounds for enforcement, a city department may wish to revoke a tow-truck driver’s license based on the city’s investigation of a complaint filed by a city resident. The department may make an initial decision on suspension, debarment, or revocation of a license. If the tow-truck driver appeals and criticizes the city’s exercise of authority as a breach of due process rights, he or she may encounter another type of attorney in the local administrative law setting—an administrative judge or hearing officer. Judges aren’t the only branch of government that may review a department’s action—city councils and city managers may exercise their own political forms of legislative and executive review of the operating-level decision. Attorneys assist with all of these procedures.

Administrative attorneys are involved at every step of city or county department activity, from general administrative procedures like compliance with open meetings laws to advising how best to follow the department’s enabling legislation, from following substantive and procedural rules to judicial oversight of a department’s regulatory scheme. That is how city or county government administrative attorneys, like all
administrative law practitioners, play an important role in monitoring the legal principles common to all administrative agencies.

Is there a job for you? Since every community has a different political and social dynamic, I urge you to go to your home city or county government attorneys and ask about their experiences and whether they have found a satisfying career “close to home.” The personal benefits of working to better your home area make municipal law a very rewarding choice for the conscientious young lawyer.
The nonpartisan Congressional Research Service (CRS) supports the work of congressional committees and members of Congress by conducting analysis and performing research to support Congress in carrying out its constitutional functions. CRS has experts that cover all areas of legislative activity, including domestic, economic, international, legal, and scientific issues. Approximately 700 staff work at CRS, including about 350 individuals who serve as policy or legal experts and about 100 information professionals. The American Law Division (ALD) has about 50 attorneys.

I have worked in the law division of CRS since 2006 and handle requests related to administrative law, food and drug law, inspectors general, presidential pardons, and executive orders. I was hired through the law recruit program, which is open to students in their final year of law school. I had initially heard of CRS when I was a college
I did not know that CRS had a legal division until my 2L summer. As summer law clerks at an executive branch agency, we were given the opportunity to attend lunchtime programs about opportunities throughout the federal government. One session focused on jobs on Capitol Hill, and it was at this session that we heard about ALD, as well as positions with House and Senate Legislative Counsel. I remember my now-colleague discussing some legal issues on which he had answered requests for Congress, such as the constitutionality of a D.C. vote and right-to-die issues involving Terri Schiavo. As an intern, I had always thought of CRS experts as ivory tower types. It was refreshing to meet someone so personable who enjoys his work and to know that CRS had hired individuals from law schools all across the country.

At CRS, we write reports on legal issues, which are sometimes made available to the general public by members of Congress. Reports can cover hot topics and can be used to manage numerous telephone or e-mail requests that attorneys may receive on a particular subject. Some CRS reports involve intradivisional teams of multiple attorneys. Other reports may involve the expertise of policy analysts in other divisions of CRS.

In addition, ALD attorneys write confidential memoranda, which are for a single congressional client. Members of Congress may sometimes make public confidential memoranda, especially when they concern issues of first impression.

A day in the life of an ALD attorney is somewhat unpredictable. Congressional priorities and interests drive our work, so although one may arrive at the office in the morning expecting to work on a particular issue or pending request, telephone calls from congressional clients about a story in the morning’s newspaper or a statement made at a hearing could alter the course of the day. Some days may include in-person consultations (briefings) for congressional staff—and occasionally, a member—while other days may be spent fielding telephone or e-mail requests or writing legal analyses. ALD attorneys also review draft and pending legislation and offer legislative options for addressing legal and policy issues. Most attorneys are responsible for more than one issue area, so in a given day, an attorney may handle unrelated requests in all of the attorney’s different areas.

Occasionally, Congress may call upon an ALD attorney to testify before congressional committees. Such an offer to testify may occur
because of an ALD attorney’s substantive expertise in the area or may occur after the attorney has assisted committee staff by preparing legal memoranda in advance of hearings, as well as potential questions for members.

ALD offers a two-week series of Federal Law Updates twice a year—a series of lectures on current legal topics of interest to the Congress. Non-attorneys often attend as well. ALD attorneys also participate in several CRS educational institutes about congressional process and procedure. Furthermore, several ALD attorneys prepare *The Constitution of the United States of America—Analysis and Interpretation* (also known as the Constitution Annotated).

There are many things that I love about my job, and I would recommend working for CRS or on the Hill for anyone interested in the political process. The variety of congressional requests makes work interesting, and there is a chance to gain substantive depth in one’s areas of expertise. I can point to particular sections of bills and laws that I helped congressional staff draft or tweak. I also enjoy the opportunity to work with staff in an objective capacity. Attorneys may help staff cut through the arguments of interest groups to get to the heart of an issue, or determine whether a point raised by a lobbyist is a cause for major concern. This is a job where you have the satisfaction of knowing you have made a difference.

For additional information about the CRS Law Recruit Program, please visit http://www.loc.gov/crsinfo/lawrecruit.html.
Becoming a Workers’ Compensation Specialist

Rosemary Welsh

Should you consider a career representing employers or injured workers in the administrative law compensation system for workplace injuries?

Workers’ compensation is a legal mechanism designed to provide wage compensation and medical benefits to workers who are injured in the course of their employment. It is a cornerstone of our network of social insurance programs. As of 2006, more than 130 million workers in the United States were covered by workers’ compensation, and compensation and benefits exceeded $54 billion dollars.¹ Employer costs for workers’ compensation were even higher, a total of $87.6 billion or $1.58 per $100 of covered wages. The billions of dollars spent on compensation and benefits highlight the economic significance of workers’ compensation as well as the potential for a flourishing workers’ compensation legal practice.

The enactment of worker’s compensation statutes falls within the purview of the legislative power of the states, and no federal workers’ compensation insurance
program exists for private employees. Accordingly, each state has its own statutory approach, which may include private insurance, a state insurance fund, self-insurance, or a combination. All workers’ compensation programs provide coverage to employees without regard to fault. An injured worker is entitled to participate in the workers’ compensation system even if his own negligence contributed to the injury. Similarly, a covered employer enjoys immunity from damages for pain and suffering such as might be awarded in a tort action, even if it failed to exercise due care. The essential element necessary for a workers’ compensation claim is simply an injury or occupational disease sustained in the course of and arising out of employment.

In large part, the workers’ compensation system was intended to function without the need for either party to hire an attorney or file a lawsuit. In recent years, however, legal representation at administrative hearings has become the rule rather than the exception, providing an entree to workers’ compensation for young attorneys. A workers’ compensation practice allows an attorney to develop critical litigation skills in the administrative arena before deciding whether to embark on a career as a trial lawyer.

UNDERSTANDING A WORKERS’ COMPENSATION CLAIM

For most on-the-job injuries, a worker’s compensation claim is allowed as a matter of course. Medical bills are paid upon submission, and the injured worker receives compensation for time lost from work while the injury heals. A lawyer rarely becomes involved in uncontested claims. Where the causal relationship between an injury or occupational disease and the employee’s job is disputed, or where medical opinions differ as to the appropriateness of treatment or the claimant’s extent of disability, the administrative hearing process comes into play.

Administrative adjudication of workers’ compensation claims involves the same elements as regular trial practice, but on a more limited scale. The workers’ compensation statute and accompanying administrative rules provide the legal framework for adjudicating a claim. The attorney must investigate the merits of the claim, research applicable law, and develop a theory of the case. Discovery is minimal, although claimants are required to authorize release of pertinent medical records. Requests to take the deposition of a treating or examining physician are rarely granted.
A thorough understanding of the medical aspects of an injury is essential. There is no substitute for a careful review of a treating physician’s office notes, operative reports, and results of diagnostic testing. A working knowledge of common medical codings is also key, since care providers may refer to a diagnosis or procedure by its numeric code only rather than a narrative description. A medical dictionary and ICD-9 and CPT code books should be kept close at hand.

Preparation for an administrative hearing frequently includes obtaining an opinion from a physician on a disputed issue. The lawyer must not only be familiar with the medical conditions in the claim, but must also understand the law well enough to phrase the questions to be answered by the physician. A physician’s stock in trade is taking a history, examining the patient, and making a diagnosis. For purposes of workers’ compensation, however, the physician may also be asked to give an opinion as to causation. A care provider may be reluctant to give an opinion as to the cause of carpal tunnel syndrome, for example, because of a mistaken belief that absolute certainty is required. A statement of causation “to a reasonable degree of medical probability” or that it is “more probable than not” that a worker’s job caused the condition will suffice, and it’s the lawyer’s responsibility to properly instruct the physician as to the appropriate standard.

Similarly, a physician may be asked to opine whether an injured worker’s condition has reached “maximum medical improvement” or whether the injury has resulted in a “permanent impairment.” In each instance, the lawyer must be careful to define the terms for the physician. While it is not necessary to parrot certain “magic words,” a medical opinion must be phrased to meet the applicable legal standard. Physicians who regularly treat work-related injuries expect to receive accurate information from the lawyer with respect to the facts and the law, and developing and maintaining a good professional relationship with the medical community will pay dividends in the future.

THE ADMINISTRATIVE HEARING

An administrative law judge or hearing officer presides over hearings concerning disputed matters. Due process rights are respected, and the parties receive advance notice of the date, time, and place of the hearing as well as the matters to be considered. Each party may present evidence in the form of live testimony, witness statements, expert
reports, medical records, employment documents, videos, or demonstrative exhibits. The administrative rules governing the proceedings do not require strict adherence to the rules of evidence, and objections are rare. Hearings typically last about 15 minutes, although additional time may be granted. Generally no formal record of the hearing is made, but any documents submitted are preserved as part of the claim file. If warranted, either party may arrange for a court reporter to transcribe the hearing at its own expense.

A few days after the hearing, the hearing officer issues a written decision granting or denying the relief requested. The decision will generally include the rationale and specify the evidence relied upon. Most states allow for a further administrative appeal and a chance to remedy any evidentiary shortcomings, but the number of appeals is limited. The timely resolution of workers’ compensation claims works to the advantage of a beginning lawyer eager to gain experience. While the usual personal injury case may take two to three years to get to trial, administrative resolution of a workers’ compensation claim is often completed in less than six months. Aspiring litigators benefit from the opportunity to examine witnesses, present exhibits, and make arguments during administrative hearings with much greater frequency than in the usual trial practice. An attorney who specializes in workers’ compensation practice may handle 25 or 30 hearings a week. Also, because witnesses are not deposed prior to the hearing, the lawyer learns how to deal with unanticipated testimony.

For those cases in which a final administrative decision is appealed to court, the lawyer who has handled the administrative hearings will already have a solid understanding of the case. Written discovery, depositions, and appropriate motion practice can be conducted with efficiency and skill. In short, administrative workers’ compensation practice allows lawyers to gain valuable litigation experience and to present the case in a manner that is most beneficial to their client.

REPRESENTING EMPLOYERS AND INJURED WORKERS

Most attorneys choose whether they will represent employers or employees and limit their acceptance of clients accordingly. Ideally, representation of an employer begins long before a workers’ compensation claim is filed. The lawyer may function as a “risk management consultant” to assist the employer in implementing policies contributing to a safe workplace. Procedures for reporting and treating injuries,
providing light duty, and facilitating return to work are important cost-control measures. Where written disclosures are required to benefit from statutory presumptions, counsel can verify compliance. In Ohio, for example, R.C. 4123.54 creates a rebuttable presumption that where an injured worker tests positive for drugs above the statutory level, the drug use is the proximate cause of the injury. To benefit from the presumption, the employer must post written notice to employees that the results of a chemical test—and the refusal to be tested—may affect the employee’s eligibility for compensation. The lawyer’s assistance can be invaluable in complying with the statute. Besides managing risk, these efforts help to develop a relationship of trust and confidence between lawyer and client. A good working relationship will go a long way in smoothing out the inevitable bumps in the road when a claim is filed.

Attorneys typically charge employers by the hour for representation in connection with workers’ compensation matters. By hiring an attorney to defend against the allowance of a claim or approval of a particular medical treatment, the employer hopes to save money down the road but cannot expect to receive payment from the claimant or any other party. A thoughtful practitioner, therefore, will often use paralegals and other support personnel to assist in case preparation and keep costs down for the employer. Well-trained paralegals can relieve a busy practitioner from the mechanics of filing motions and appeals, obtaining signatures, and collecting medical records and can significantly lower billing rates as well.

Attorneys who choose to become claimants’ counsel are also called upon to provide advice and navigate the workers’ compensation system on behalf of their clients. Even though workers’ compensation statutes must be liberally construed in favor of awarding benefits, every injury that occurs at the workplace is not compensable. Explaining to a disabled factory worker who suffered a heart attack at work that he may not be entitled to workers’ compensation benefits can be a challenge for even the most experienced attorney. Similarly, even when a claim is allowed, an injured worker must be informed that visits to the chiropractor three times a week for months and months is not authorized and that he may be required to foot the bill for prolonged care. Paying for medical services may seem especially burdensome since the compensation an injured worker receives while his injury heals is only a percentage of his regular earnings, not the full amount. Accordingly, zealous representation of an injured worker may include expectation management as well as budget counseling.
On the other hand, workers’ compensation recipients are generally pleased to learn that they are entitled to a lump-sum award for any permanent impairment resulting from their injuries. Wage loss attributable to the industrial injury is also compensable. Awards of compensation are the primary source of payment for claimants’ attorneys, who typically provide representation in exchange for a percentage of the compensation received. Where a claimant is found to be permanently and totally disabled and, therefore, becomes eligible for lifetime benefits, claimant’s attorney receives a lump-sum fee, subject to approval by the worker’s compensation administrative body. Similarly, the fee awarded to an attorney who obtains a favorable verdict for his client on a court appeal is frequently set by statute. In Ohio, for example, an attorneys’ fee of up to $4,200 may be awarded by the trial judge, based on the effort expended.\textsuperscript{3} Claimants’ attorneys have high earnings potential, but their income is subject to significant variation.

**HEARING OFFICERS AND ADMINISTRATORS**

The hearing officer acts as both judge and jury for the administrative adjudication of a workers’ compensation claim. A hearing officer must have a JD, but no special experience is required. An attorney selected to be a hearing officer receives several months of specialized training in the procedural, legal, and medical aspects of workers’ compensation. The training process includes attending hearings with an experienced hearing officer to develop familiarity with the hearing process.

The hearing officer plays a pivotal role in the expeditious and impartial resolution of issues arising in the course of administering claims. Besides deciding the merits, the hearing officer manages the hearing process by granting or denying continuances, apportioning time between the parties, and controlling witness testimony. On occasion, hearing officers may even get into the act by asking key questions that the attorneys overlooked. Particularly where a claimant is unrepresented, hearing officers may explain the hearing process to the participants and offer guidance as to the next steps.

In most cases, hearing officers say that the right answer is clear and the matter can be decided based on the evidence presented at the hearing. In some instances, however, an unusual issue may require additional research, and the hearing officer will issue an ex parte order postponing a decision to allow time for research and consultation with colleagues. With four hearings scheduled every hour, however, the vast
majority of cases are decided without further review. Hearing officers develop a high level of expertise in dealing with even the most arcane features of workers’ compensation law.

A lawyer who elects to pursue a career as a hearing officer must be comfortable making decisions. Hearing officers may hear upward of 100 cases a week, and each one requires a decision. Experienced hearing officers enjoy the autonomy of having control over their docket and deciding the issues. While the volume of cases may raise the specter of repetition or boredom, hearings involve a variety of interesting legal issues and the job is both varied and fun. Further, unlike a typical litigation practice, a hearing officer’s work week does not exceed 40 hours.

Lawyers may also serve as hearing administrators. The administrator may conduct prehearing conferences for permanent total disability claims, but the job is largely managerial and supervisory. It is the administrator’s responsibility to assure that the hearings are scheduled appropriately, that hearing officers are assigned, and that notices are provided to all parties. The administrator will also rule on requests for continuances submitted in advance of the hearing. Some, but not all, administrators go on to become hearing officers.

Hearing officers and hearing administrators are state employees, and these positions typically include benefits and retirement. An attorney may pursue a 30-year career as a hearing officer, but moving to private practice after five or six years is also an option. Law firms value the expertise and professional polish that good hearing officers bring to the practice, and the lawyer may wish to return to the advocacy side of the table.

ETHICAL ISSUES

One of the more common ethical issues presented by workers’ compensation practice is the unauthorized practice of law. Although the workers’ compensation system is intended to operate largely without representation, the administrative adjudication of disputed issues presents pitfalls for the unwary. In a claim that has been allowed for a lumbar sprain, for example, the treating physician may diagnose a herniated disc and file a motion seeking to have the herniated disc allowed in the claim. Filing motions, however, constitutes the practice of law. The claimant or the employer who are parties to the action may file motions, but physicians or other care providers may not, despite their best intentions to advocate for their patients. Such a motion is invalid and may subject the physician to civil penalties.4
On the other hand, union representatives may assist an injured worker, and a service company or third-party administrator may help the employer administer its workers’ compensation claims. Such assistance is acceptable as long as it does not involve legal analysis, skill, citation to legal authorities, or interpretation. Although nonlawyers may provide representation at administrative hearings, a nonlawyer’s role is limited to stating the party’s position and identifying specific evidence in the record that supports that position. Only attorneys may make legal arguments, examine witnesses, and comment on the evidence.

Hearing officers are in the best position to spot the unauthorized practice of law, but employers’ counsel and claimants’ counsel alike have the same duty to avoid assisting in the unauthorized practice of law. Because of the nature of the workers’ compensation system, the potential arises more frequently than in other settings, and heightened awareness is warranted.

CONCLUSION

A workers’ compensation practice allows an attorney to develop critical litigation skills in an informal setting around a table rather than in a courtroom. All the elements of trial practice come into play, from examining witnesses and presenting evidence to making arguments. Workers’ compensation matters can be adjudicated in six months or less—providing a wealth of experience in an abbreviated time frame. Attorneys may seek employment either as administrative hearing officers or representing a party to the claim, both of which require knowledge of workers’ compensation law and present unique legal challenges. Because many of the disputed matters in a claim involve medical issues, a workers’ compensation practice may be a particularly appealing option for lawyers who had a hard time deciding whether to go to medical school or law school.

NOTES

2. E.g., Cleveland Bar Ass’n v. CompManagement, Inc., 111 Ohio St. 3d 444, 857 N.E.2d 95, 2006-Ohio-6108, ¶ 8.
3. R.C. 4123.512(F).
4. In Ohio, the medical community and the workers’ compensation bar worked together to develop a new form whereby physicians could give “notice” to all parties of their recommendations as to additional conditions or proposed treatment without running afoul of the prohibition against the unauthorized practice of law.
Should your long-term career plans include consideration of the role of federal administrative law judge?

I highly recommend a career as a federal administrative law judge. Where else can one earn a decent living with a good retirement program while daily concentrating on doing what is right? I served for 27 years as a judicial officer for the U.S. Department of Labor, 5 as a hearing officer for “black lung” cases, and 22 as an administrative law judge (ALJ). Thereafter, I was appointed chief ALJ at the U.S. Department of Interior, responsible for 9 branch offices, 11 administrative law judges, and a staff of 65. During this 29-year period I traveled to over 230 towns and cities throughout the United States and Puerto Rico. I heard and decided over 2,500 cases, all requiring full written decisions in addition to ruling on motions such as granting or denying requests for continuances,
withdrawals, remands, and attorney fees. Travel was not always to exotic places (try Hazard, Kentucky), but usually pleasurable and interesting and the caseload was heavy but rewarding, providing a sense of accomplishment and fulfillment. More of this later.

WHY ALJS?

Administrative law judges are often referred to as “Article I” judges since their legitimacy arises under the executive powers set out in Article I of the U.S. Constitution, rather than those judges who compose the third branch of government under Article III who are relatively equal in power to the executive and legislative. The specific delegation of independent judicial hearing and decision-making authority to ALJs arises from the Administrative Procedure Act (APA) enacted in 1946. A primary purpose then and still today is to relieve the Article III district judges of a burdensome number of disputed cases, while still maintaining agency expertise in the presiding judge but with independent judicial decision-making authority.

Historically, this need had arisen because of the prolific expansion during the Franklin D. Roosevelt “New Deal” years of government agencies such as the Securities and Exchange Commission (SEC), the FCC, and the now defunct Interstate Commerce Commission. Prior to the enactment of the APA, decisions that came under the jurisdiction of an agency or cabinet department were made by agency personnel, often called hearing examiners or hearing officers, who did not have the protections set out in the APA to guarantee independent decision-making authority uninfluenced by other agency superiors.

Thus, the early appointment of ALJs was largely to economic regulatory agencies. The trend, however, has slowly but definitely gone toward appointment to agencies, particularly Social Security, whose primary purpose is to award benefits to deserving applicants under their programs. The intent of the APA to ensure due process in hearings (or rulemaking) and the independence of ALJs has been firmly secured through the years, exemplified by the Supreme Court’s recognition that their decisional powers were not dissimilar from Article III judges. (*Ramspeck v. Trial Examiners*, 345 U.S. 128 (1953)). ALJs cannot be removed from office except for good cause after the right to a hearing.
QUALIFICATIONS

One’s set of qualifications to become a federal administrative law judge will be formally evaluated in a program administered through the Office of Personnel Management (OPM). An applicant must fulfill four requirements:

1. Seven years of trial experience;
2. Recommendations of fellow lawyers and/or judges;
3. Written examination; and
4. Oral examination.

The seven years of trial experience must be specifically demonstrated with cases cited and days and hours worked set out in detail. Moreover, the time claimed must be significantly related to trial work. Thus work on divorce cases, real estate closings, and similar matters are not qualifying. On the other hand, clerking for a judge or appellate body is most often qualifying and is a basis for many applicants. The seven-year trial experience requirement is mandatory and nonnegotiable.

Questionnaires are sent by OPM to at least 20 adversaries, judges, or others affiliated with cases and legal work the applicant has furnished in summarized form as a part of his application. The written examination is a four-hour exercise, using computers although handwritten answers may be permitted. Given a hypothetical fact pattern with laws to be applied, the applicant is instructed to write the ALJ decision to be rendered. The oral structured interview is before three individuals: a representative from OPM, an attorney practitioner, and an ALJ (active or retired). The four requirements are graded on a strict but complex formula, and the applicant is given a final score. OPM takes extreme care to make all testing and grading as objective and fair as possible. Nevertheless, an appeal process is provided, again with strict and extensive processing requirements. Meeting an established minimum score permits the applicant to be placed on the register from which individual agencies may hire. Generally speaking, the highest three applicant scores are those from which the agency must hire. However, the applicant must be willing to be assigned to the geographical location to which the agency has a vacancy. Since nearly all the hires off the register during at least the last three years have been with Social Security, it frequently happens that a hire—for example, in Ottumwa,
Iowa—might be from significantly further down the list of those applicants available. Of course, agencies where a vacancy appears may, with permission of OPM, hire ALJs from other agencies. Chief ALJs seem to have an uncanny ability to determine the best of the Social Security ALJs and to attempt to hire them when in need. Similarly, the agencies with the highest or most sophisticated legal analysis in large-money and high-profile cases have usually been able to successfully recruit from other agencies. While most ALJs have been satisfied with the agency they originally were hired by, others have actively sought a diverse experience through work at different agencies.

ALJ ASSIGNMENTS AND AGENCY FUNCTIONS

As of March 2008, OPM reported that there were 1,318 active ALJs dispersed over 30 agencies. Of these, fully 1,066 were assigned to the Social Security Administration (SSA). Two agencies had an unfilled vacancy, while eight had only one ALJ. Only five agencies in addition to Social Security had 10 or more ALJs on board; they were Department of Interior, 11; Federal Energy Regulatory Commission (FERC), 14; National Labor Relations Board (NLRB), 41; DOL, 42; and Department of Health and Human Services/Office of Medicare Hearings and Appeals, 69.

The operations and activities as well as legal scope of ALJs assigned to these different agencies and the agencies’ authority are as varied as imaginable. As the name “judge” incorporates individuals presiding over traffic cases as well as those sitting on the Supreme Court (even though called justices), so too are ALJs assigned a wide variety of cases for hearing. Similarly, while administrative law professors and other academicians may attempt to develop a rational and uniform system for explaining “administrative law” in books, treatises, and to their students, the truth as faced by U.S. ALJs is far different. Each agency has its own culture, rules and regulations, judicial structures, histories, and limitations. In some agencies, for example, initial decisions by ALJs become final unless appealed; others may retry the matter on appeal, including facts. Many agencies—for example, the DOL—house the hearings division separately from the reviewing authority, and from the agency itself, in order to further the perception as well as reality of independence. Labor ALJs have final decision-making authority, the same as Article III judges.
The Department of Interior, on the other hand, has its hearings division housed under the Office of Hearings and Appeals headed by a nonjudicial director along with three separate reviewing boards, one of which, the Land Appeals Board, has some original jurisdiction. Both Labor and Interior’s reviewing boards are well staffed with administrative judges, attorneys, and clerks. In many agencies, particularly those who have only one or a few ALJs, agency review of ALJ decisions is by a nonjudicially appointed agency employee. At so-called quasi-judicial agencies often focused on primarily one area such as FERC, the International Trade Commission (ITC), NLRB, the Federal Labor Relations Administration (FLORA), and the FCC, ALJ decisions are reviewed by the commissioners themselves. The degree of deference granted ALJs may vary from agency to agency and administration to administration.

The policy in some agencies of having administrative judges (AJs) serving as reviewing authorities, whether individually or on boards, can be a cause of disgruntlement or even conflict. Given the title of judges by the agency, AJs, nevertheless, are seldom required to demonstrate their judicial bona fides and in particular need not take the merit selection requirements of ALJs. They are often appointed by agency leaders on a political or personal basis or elevated from previous positions as staff attorneys within the agency. Nevertheless, AJs often opine that by their very position, as reviewing authorities of ALJs’ decisions, they should be accorded higher prestige and salary. Such status problems are rare under the Article III system since appeals judges are most often selected from the generally perceived most experienced and best of the district, or trial judges. Additionally, some agencies, such as the Departments of Energy and Agriculture, use AJs for decision making that some observers suggest should be done by ALJs because of their decisional independence.

WHAT ALJS DO

Young lawyers who will be the future prospective ALJs should recognize a few examples of the actual workings, expectations, scope of activity, and experiences of ALJs. FERC administrative law judges are all housed in Washington, D.C., and rarely travel to hear cases. While deregulation has eliminated or diminished the need for ALJs elsewhere, the volume of cases at FERC has not significantly decreased since
deregulation of energy was initiated some 10 years ago. Many controversies over utility rates or licensing, for example, are settled often after protracted negotiation that may include orders issued by the ALJ such as setting the parameters of discovery or ruling on the admissibility of parties. Settlement is encouraged at FERC. One of the longest and most contentious involved California’s utility rates: then Governor Davis claimed the state was owed around $9 billion. Cases that do go forward are often complex and high profile, with large amounts of money at issue. Appeals from ALJ decisions are to the FERC itself, which has shown deference to ALJ findings generally.

Similar complex issues and high-profile cases are determined where huge sums of money may be involved at the ITC. The ITC deals with international trade disputes. Currently, four ALJs are on staff at ITC. Its courtroom is jumbo-sized, permitting it to sit the 60 attorneys who appeared at one hearing, plus room for onlookers. ALJ decisions, regardless of size, must be written within 120 days of the record closing. Appeals again are to the Commission, which is politically appointed and may take a free trade or protectionist leaning, depending on the party in power. One retiring commissioner complained of the general counsel having too much influence on the course and outcome of proceedings.

The DOL’s ALJs, on the other hand, deal almost exclusively with compensation or discrimination cases. The largest volume for years has been black lung and “longshore” disability cases. However, among the 70 or more statutes under which controversies may arise are Davis-Bacon, Whistleblower, Child Labor, and Labor Immigration Certification. Labor currently has seven branch offices, but still requires extensive travel to cities or towns close to where the parties are located. Typically, cases are “bunched” so that, for example, an ALJ traveling to Charleston, South Carolina, might be assigned 12 to 15 longshore cases, of which two-thirds would settle prior to hearing. Similarly, travel to London, Kentucky, might include 20 black lung cases, of which perhaps six would be continued, one withdrawn, and the rest heard. The SSA has ALJ branch offices spread throughout the country, including one or more in every state. Typically, each ALJ has access to an attorney-advisor who will draft all or nearly all decisions. Many SSA ALJs hear and decide 50 or more cases per month, as they are encouraged to do because of the high volume of applicants seeking disability benefits. All or nearly all SSA offices have a courtroom in a location convenient
for most applicants. However, some travel is required for cases more than 50 miles away.

**WHO ARE ALJS, AND WHO SHOULD APPLY**

A 5- or 10-point Veteran’s Preference score on ALJ applications benefited men at the expense of women in the early years. A less weighted score for vets, increase in women graduates from law school, and competition has resulted in a narrowing of the margin. Government attorneys in the long, time-consuming application process have an advantage over private practitioners who are fully aware of the idea that time is money; moreover, by the time the seven-year trial practice requirement has been realized, private attorneys still in the game are probably earning a salary seriously discouraging them from applying. Some, but too few in my opinion, successful attorneys who have earned a substantial living but have tired of the rat race and would like to cap a career by “being fair” rather than litigious have applied.

When I am asked what quality is most needed in a judge, my answer is clear: integrity. Integrity in never accepting anything of value by a litigant (I always gracefully refused even an offer of coffee) is easy. But, importantly, it is in taking whatever time, examination and reexamination of the facts and record, mental concentration, and diligent effort is necessary to reach the unbiased, “correct” (not necessarily “fair” or “just”) conclusion. Common sense is also needed, more than intellectual intensity, and the judge should have a calm, judicial demeanor. Arrogance, sometimes described as a judicial disease, is to be avoided. I very much enjoyed and took pride in a well-crafted decision that described in succinct terms the bases on which my determination had been made, the facts that supported it as well as those in opposition, and the arguments made and laws applied. On rare occasions I would, in a closing section separate from the analysis and fact-finding of the decision rendered, under the heading “Comments,” list reasons why I thought the decision I felt compelled to make was not fair or did not comport with the purposes of the legislation under which it arose. The reasons, for example, might include that the appellate judicial decisions were headed in the wrong direction, the regulations should be modified, or the attorney did not fulfill his obligations on presentation of evidence.
A UNIFIED ALJ CORPS

As early as the 1970s, a movement among ALJs, supported by some members of Congress, was to form an “ALJ Corps” that would house all ALJs under one agency. Supporters claimed the problems of perceived agency influence would be eliminated, and that an automatic balancing of ALJ personnel and caseload could be made as judicial work ebbed and flowed in different agencies. Thus, there would be a savings to the government as well as the additional advantage that ALJs would have a variety of cases and freshness of approach to their work while not losing expertise. ALJ support at the time was nearly unanimous. Through the years, however, fears of domination by Social Security due to its very size, or by a chief judge who might not be to an ALJ’s liking, or that Congress in establishing legislation to create the corps would insert language that would give the congressional committees “oversight” power (resulting merely in a shift from potential agency or executive influence on decision making to congressional influence), along with lack of leadership in pursuing this seemingly beneficial concept, has caused the movement to have a slow death, with resurrection in the near future a very remote possibility. Indeed, most ALJs, particularly those other than Social Security, are pleased and secure within their own agency and do not wish to risk a change in their judicial arrangements.

CONCLUSION

A well-trained, experienced cadre of ALJs is well recognized and respected by practitioners for its judicial integrity, independence, and competence. Not all decisions rendered by federal agencies need be subject to ALJ jurisdiction for hearing. Others are amenable to nonjudicial determinations such as mediation or other alternative dispute resolution. However, when substantive rights of private parties are affected adversely by agency actions and/or controversy arises between private parties because of agency actions, a competent form of independent, impartial final decision-making authority is required. The best manner of obtaining settlement is where all parties are aware that they will obtain a fair, impartial hearing and a relatively prompt decision based on the merits. In my opinion, more ALJ usage should be encouraged or mandated by Congress.
When you consider the safety of the products that you and your family use every day, you might not think about the lawyers whose careers focus on making those products safer. Unlike product liability lawyers who make themselves so visible after disasters occur, we who specialize in this corner of administrative law are happiest when no crises occur and products safely move from design to the hands of the consumer.

“Other” is what we usually check off on CLE and malpractice insurance forms even though I have been practicing product safety law for nearly 35 years. Then we write in the blank space, “consumer product safety law” to convey that our principal practice is before the U.S. Consumer Product Safety Commission (CPSC). Unlike its cousins, FDA, EPA, and OSHA, some people respond that they have never heard of the CPSC and then demand an explanation of what we do. Frankly, this is not surprising, because neither the agency nor its practice area
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has been accorded much visible respect over the years. CPSC has long
been considered a backwater agency, and even its former commissio-
ners have struggled to find positions after their terms expire.

But that is about to change, thanks to Congress and the economy. In
2008, Congress passed the Consumer Product Safety Improvement Act
(CPSIA), which reauthorized the CPSC for the first time in 18 years
and changed its statutory framework in major ways. It also reversed the
“death by starvation” regime that the agency had been enduring, and
substantially increased its appropriations. The multitude of new rules
that were statutorily mandated set off a feeding frenzy among cash-
starved law firms, which no longer consider this area “small potatoes.”

“Product safety expertise” pops up now on virtually every law firm
website, but is the claim true? What has traditionally been a small niche
practice has suddenly become part of “customs law,” part of “transpor-
tation law,” or part of “environmental law,” depending on the market-
ing tilt of the particular firm. Whether these newcomers will survive,
amid the high potential for “rookie mistakes” in this specialized field,
remains to be seen. Professional respect is going to come from partici-
pating in the work of implementing the 2008 legislation—in short, the
huge task of cleaning up the statutory mess that Congress has made
of the laws that CPSC administers—and unraveling the knots created
by the multitude of unintended consequences of the new CPSIA. The
agency counsel will be assisted by the product safety veterans in private
practice, who can offer them creative solutions and feasible interpreta-
tions based on agency precedents.

Both sets of lawyers, inside and outside government, have the same
mission: to protect the public from unreasonable risks of injury from
consumer products. Consider this subarea of administrative law to be
the flip side of product liability, that is, keeping unsafe products from
entering the stream of commerce in the first instance. With the massive
influx of imported consumer products in the past 20 years, this preven-
tive and counseling mission has taken on a new sense of urgency. Rather
than litigating a product liability case after an injury has occurred, risk
avoidance is the role of product safety lawyers. The CPSC seeks to pro-
tect the public prospectively through rulemaking, corrective actions,
and legislation. Getting the optimal public policy on safety is the thread
that runs though all these things. But determining what particular risks
of injury are “unreasonable” often divides the agency staff as well as
the product safety bar.
The scope of CPSC activities is extremely broad, due to the statutory definition of a consumer product, namely any article or component part thereof that is produced or distributed for sale to a consumer for use in or around a permanent or temporary residence, a school, in recreation, or otherwise. Construing or creating public safety policy, as seen through the prism of 15,000+ consumer products, is a remarkably complex role that gives rise to the daily activities of any product safety attorney.

In essence, product safety policy is set through mandatory safety standards or bans, “substantial hazard” reports and recalls, and congressional action. We will describe each of these activities in more detail. Imagine yourself in either the shoes of the agency attorney or of the private attorney representing a client before the Commission.

THE CPSC

The CPSC was created in 1973 as a compromise between the White House and Congress over a national consumer protection agency. It has five commissioners and approximately 500 employees within a variety of disciplines ranging from engineers, epidemiologists, toxicologists, and human factor analysts to media affairs specialists. CPSC administers five different statutes: the Consumer Product Safety Act, the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act, the Poison Prevention Act, and the Refrigerator Safety Act. Each statute has its own peculiarities (toys are hazardous substances under the FHSA) and differing requirements, which add to the challenge of the practice.

Rulemaking

In order to establish a safety standard or regulation for a consumer product, the agency must go through a rulemaking. Potential subjects for rulemakings are ideally selected through injury data analysis to detect emerging hazards, but they also can be requested by public petitions. Lawyers are involved at each step of rulemaking. The agency lawyers must determine which statute is most appropriate for the regulation of the subject matter, and whether the data can support a CPSC finding that the unreasonable risk of injury can be prevented or reduced by such a standard or ban. Counsel for the interested parties will submit comments that present data and arguments for or against the proposal.
and offer alternatives for the agency to consider. The process of negotiation can last years and will generate significant fees for the law firm(s) representing the affected industry. Rulemaking offers attorneys the best opportunity to have a positive impact on public policy, with considerable opportunity to pose alternatives and use creativity, before any crisis arises.

**Reporting and Recalls**

By far, the majority of the daily work of lawyers at and with the CPSC takes place when products in the marketplace and homes are found to have safety problems. This is the bread and butter for any product safety attorney in private practice.

1. **Reporting.** A provision in the CPSC legislation, Section 15(b), requires manufacturers, importers, distributors, and retailers to immediately report to the CPSC when they obtain information that reasonably supports the conclusion that their product fails to comply with a mandatory safety standard, that their product may contain a defect which could create a substantial product hazard, or that their product creates an unreasonable risk of serious injury or death. While noncompliance with a mandatory safety standard triggers an automatic report, the other two grounds for reporting are much more nuanced. The counsel for the individual company must make quick decisions, often based on a single complaint, quality report, or “incident” report. The stakes are always high. That quick decision can often mean millions of dollars for the company in recall costs or millions of dollars in civil penalties for the company if it fails to report.

   Even if a voluntary report is not made to the agency, the Commission staff may discover the problem itself through consumer complaints, retailer reporting, or third-party investigations such as state attorneys general, consumer advocates, or the media. In such a case, the agency will send the company an investigatory letter and invite a response. Both a corrective action plan and a penalty for failing to report are likely outcomes from a decision not to report to the agency.

   A civil penalty ($15 million cap) is still possible even though a company makes a report under Section 15(b). In these cases, the Commission determines that a company failed to make an adequate report in a “timely” manner. In other words, the agency contends that the company had an obligation to make a report much earlier than it
actually did. The negotiations between the lawyers concern what the cli-
ent knew and when it knew it or reasonably should have known it. Once
that is resolved, the negotiations then turn to the amount of the civil
penalty and the consideration of any mitigating factors. Occasionally,
these cases will end up in litigation in a federal district court, but the
majority of them settle with a consent agreement.

2. **Corrective action.** Once a report is made to the agency, then
counsel for the company may choose to develop a voluntary correc-
tive action plan or to litigate the need for corrective action with the
Commission staff in an administrative proceeding. Regardless of
whether a plan is voluntary or is ordered after litigation, the plan typi-
cally will involve a recall to repair, replace, or refund the purchase price
of the potentially defective product and will specify how the company
intends to make the public aware of this recall. In the case of voluntary
corrective actions, the agency must approve the corrective action plan
that the company proffers or may impose its own plan. Both of these
alternatives can entail extensive negotiation. Once the agency and the
company announce the recall, then the hard work begins of actually
implementing the corrective action. Counsel must monitor the work in
order to prepare and submit monthly progress reports to the agency. If
at any time the agency is not satisfied with the progress of the recall,
it can order the company to re-announce the recall and start all over
again.

**The Congress**

The respective oversight committees in the House and Senate are prone
to interfere with the activities of the CPSC much more frequently than
with its counterpart agencies. Potential injuries to children always make
for good media attention, particularly during election cycles. Thus,
members of Congress are quick to drop in bills directing the agency
to address injuries caused by this product or to ban that chemical, fre-
quently before the facts or science are known. As a result, the statutes
are littered with provisions that seem to have dropped from the sky.

This predisposition of Congress presents an opportunity for counsel
to use the legislative process to benefit a client or industry. Frequently,
a position paper is developed and then shopped around the members of
the commerce committees or the congressional delegation of the state
where the company is headquartered. Once interest is expressed, then
the educational process of a majority of the members of the subcommit-
tee, then the full committee, and eventually the full chamber takes place. More background papers are drafted, coalitions or alliances are built, written and oral testimony is developed and presented, amendments are proffered, report language is suggested, and eventually a bill emerges that is passed. Then the process starts all over again in the other chamber in somewhat similar steps, until you reach a Conference committee, from which the final piece of legislation emerges. Each step requires critical analysis and skillful writing by counsel, frequently under tight deadlines. In the end, however, a public law authored by you and signed by the president is a beautiful thing to behold. It many respects it is the epitome of success for someone who wants to influence public policy for the benefit of the client and of the consumers of this country.

On any given day, the desk of a product safety attorney will be filled with matters touching on all three ways of protecting the public from unreasonable risks of injury. It helps to be able to multitask because you will have to keep many balls in the air at one time. You will never be bored as there is always something new to learn. Within 24 hours, you must be able to jump from one subject that you know intensely due to a lengthy rulemaking process, to three products about which you only have limited knowledge because of the time pressure to initiate an expedited recall and then to a third subject about which you know nothing but must strategize with your client to obtain congressional relief. A working knowledge of the various sciences and disciplines relating to consumer products or a technical background will be an advantage, although plenty of lawyers with liberal arts degrees have flourished once they found reliable testing labs.

The year 2010 is a good time to consider product safety law because the agency is hiring new legal talent. Moreover, companies and law firms are looking to hire young attorneys with product safety experience with CPSC. You will earn a fair living, and your work will matter to families who will never know that your efforts made their baby’s bottle safer or kept their child from a risk that older models of that product might have presented. These are the psychological rewards of a job well done. You will need flexibility; good listening skills; ability to be a balanced observer of divergent client and government views on the same risk issues; and a great deal of personal integrity, because as with any field that has a small active bar, lawyers know and respect those attorneys whose competence and honest dealings can be trusted. Please consider this area of law as you develop your career path.
Becoming a Multitalented Administrative Lawyer

Kellie Ann Moore

There has never been a better time to pursue a career in administrative law. If you look closely, each and every minute of your day involves a regulated commodity, service, or enterprise. Like it or not, from that first cup of coffee to the gas you pump into your car to the labor laws at work in your office, you would be hard pressed to circumvent a regulation, law, or policy embodied in the code. As laws today work their way through months of committee hearings, meetings with lobbyists and special interest groups, floor debates, and backroom bargaining sessions, it’s no wonder that so much complexity is routinely added to the simplest pieces of legislation.

For example, in 1956, Congress passed the Federal Aid Highway Act, the largest public works act in American history. The Act, comprised of a total of 28 pages, authorized and funded the interstate highway system. In 1991, the Federal Highway Act was reauthorized by the
Intermodal Surface Transportation Efficiency Act composed in 293 pages. Thirty-five years later, the basic legislative goal remained the same; however, the new legislation required building more highways in ways that would aid mass transit, preserve historical sites, encourage wearing seat belts and motorcycle helmets, control emissions and soil erosion as well as outdoor advertisements, reduce air pollution, require a percentage of asphalt to include recycled rubber and U.S. produced raw materials and so forth.

Fast forward 20 years later, and it’s easy to see how elected officials have codified in their rules, which have grown exponentially. Face it; the world we live in today is heavily regulated, and the number of regulations in effect does not appear to be shrinking.

Businesses operate at their own peril should they choose to function without legal counsel skilled in the understanding and practical application of the applicable industry regulations. Thankfully, there are lawyers like you and me who can support the multitude of companies seeking such regulatory guidance.

So how did I become a regulatory lawyer? I’d like to say that from the age of five, it was nothing that my parents did or didn’t do—I was destined to become a regulatory lawyer. However, that would be far from the truth. I actually “fell” into administrative law through a course of events that, thankfully, caught my innate curiosity. After earning my undergraduate degree in communications from the University of Southern California, stepping back onto a college campus for any reason other than the USC–Notre Dame football game was far from my mind. Corporate America beckoned, along with stock options and the chance to learn hands-on the practical skills of an industry professional. By luck, Amgen, Inc., a biotechnology company in Thousand Oaks, California, hired me to develop course materials for their Regulatory Compliance Education Department. Working for Amgen taught me a very important lesson: never say never.

My first day on the job involved plenty of pleasure reading, commonly known as the Code of Federal Regulations or the CFR. Reading and analyzing how to comply with 21 CFR 200, et seq., the current Good Manufacturing Practices, became part of my daily existence. Whereas the regulations offered a road map, executive leadership supplied the desired destination in the form of business goals and objectives. My job involved strategically mapping the journey from point A to point B in compliance with the code. I was hooked. I discovered how
fun it was to think through the requirements, pull together the various business units, and shepherd the team to compliance.

Working closely with my employer’s law department, the in-house counsel at the time must have recognized how much fun I was having. One day, counsel called and asked if I had ever thought about attending law school. I was in shock. My first thought was how could I leave my compliance responsibilities and go back to being a student living on macaroni and cheese. Thankfully, counsel suggested that I attend Loyola Law School in the evenings on a corporate scholarship. How could I say no? Being the type of person open to life’s many opportunities, I knew such a blessing was a once-in-a-lifetime opportunity that had to be pursued.

Law school, law review, and a full-time professional job left me little time for idle hands. Law school supplied many of the “how to think and approach” tools I needed to become a regulatory attorney. Industry supplied the practical challenges for legal consideration. Looking back, going to law school and studying regulatory law was the best decision I ever made aside from marrying my wonderful husband.

As a law school graduate fresh from the California Bar Exam, I knew I needed to obtain practical training in a law firm setting—but where? California is a long-distance commute from the Beltway where much of the government and regulatory practice groups tended to thrive. Law firms, representing diverse clients with a wide variety of legal challenges, offered the best opportunity for me to develop my skills in representing corporations. Plenty of firms were hiring recent graduates to work on matters that nine times out of ten involved regulated entities, but the job descriptions rarely required a passionate interest in regulatory law. Not to be deterred, it would be up to me to enlighten the firms as to the value of my regulatory insight.

I knew my skills and industry experience would prove invaluable in representing such clients in a wide range of matters from transactions to litigation. I just needed to use those powers of persuasion to help the firm partners see the light. Looking beyond the four corners of law firm job postings (i.e., applications accepted from top 10 percent GPA only) I applied, networked, and suggested my candidacy to large international law firms representing clients from my preferred regulated industry, that of the pharmaceutical and medical device manufacturers. All along, I reminded myself that where there’s a will, there’s always a way.
At first, I started out as a litigator representing manufacturers defending allegations of product liability. The firm initially assigned me to traditional first-year associate activities. However, as I became more involved, partners recognized that I understood how to think through and apply the various regulations to client issues. It didn’t matter if the case involved FDA, EPA, FTC, CPSC, or SEC regulations; understanding the regulatory mind-set allowed me to quickly digest the regulatory framework applicable to the client’s interests. I became the go-to person who could identify compliance issues in underlying merger and acquisition agreements, interpret expert witness depositions discussing the regulatory nuances of a particular activity, and incorporate compliance requirements into commercial agreements involving activities subject to regulatory agency oversight. As much as regulations are a part of our everyday lives, their application from a legal practice perspective is equally pervasive.

Fast forward nine years later, and I am still busy applying regulatory law and assisting companies with their compliance efforts. Even in tight economic times, companies operating in the public sector need lawyers to help them navigate through the complex regulations that affect their daily existence.

Over the past few years, I have applied my regulatory background on a global level by drafting and negotiating contracts for clinical research worldwide. Such agreements involve contract drafting and negotiation experience as well as a solid understanding of the regulatory risks associated with the services being performed.

If you find U.S. regulations to be enjoyable, try drafting a contract for technical research services to be performed in Poland, subject to the regulations of the European Union as well as Poland, to obtain protected health data that ultimately will be sent to the U.S. sponsoring company for inclusion in their upcoming license application to the U.S. FDA. Applying the regulations to such contracts protects many people beyond the companies I directly represent. By ensuring that certain terms are included and understood by the contracting parties, patients participating in the clinical trials for new and novel therapeutic medicines are afforded a level of assurance, as the parties conducting the trial understand they can be civilly held accountable for compliance with the regulations enacted for patient safety.

As you can imagine, I love the work that I do, and I am not alone. Recently, I attended the American Conference Institute conference on
drafting international clinical trial agreements and discovered over 1,000 attorneys who, like me, relished the interface between regulatory law and commercial agreements. Wow, I was shocked to learn that so many other lawyers existed, performing and thriving on the buffet of regulatory intensive contracts that I loved so much.

Recently, my employer began exploring the possibility of being acquired and my role as in-house counsel was destined to transfer to the acquiring company. Although the economy appeared to spiraling down, I decided to hang out my shingle and perform contracts work as a solo practitioner. I prepared my professional networking page on LinkedIn to read like an advertisement for my unique regulatory and contracts services http://www.linkedin.com/in/kamoore and reached out to just about every colleague who has crossed my path over the past 10 years.

I also made a point of joining LinkedIn Groups that matched my industry expertise so as to allow my profile to be visible to professionals outside of my direct network. The first time I received an e-mail from an in-house counsel in Switzerland looking for assistance with a U.S. FDA regulatory term in a contract confirmed the power of professional networking to me.

Then, former clients from my life at the law firm and my former employer began knocking on my door. Each asked, “Can you help me? I’m developing a medical device and have some contracts that I need you to draft . . . for a study in Romania, Italy, Russia, India. . . .”

Looking to further build my business, I started running searches on Simplyhired.com to identify companies that were looking to hire in-house counsel to prepare and negotiate contracts for drug development activities. It didn’t matter that the company was located in Texas and I was living in Southern California. The company had a unique business need that I could fill on a temporary basis while they looked to hire the perfect in-house counsel.

In a majority of the cases, sending a cover letter and resume to the human resources department proved ineffective, as HR would note my zip code and make the executive decision that I was geographically undesirable. Seeking a back door, I utilized LinkedIn’s search feature to find former colleagues working at the company. I found colleagues working in a wide variety of roles both as in-house counsel and in nonlegal professional capacities. As colleagues knew the hiring management as well as the protocol for candidates to be referred internally, I was able to efficiently communicate my availability to work on
a temporary telecommuting basis as well as share my resume with general counsel. After interviewing over the telephone, I obtained clients who could use my contract drafting and regulatory compliance services on an as-needed basis.

I also began contacting my former students, who tended to work in-house as regulatory professionals. Back in 2001, I learned that the University of Southern California planned to start a Regulatory Sciences Masters Program serving pharmaceutical management-level professionals. After reviewing the program curriculum on http://regulatory.usc.edu/, I saw an opportunity for me to share the legal liability and practical business considerations associated with regulatory professional activities. Getting involved with the program, I volunteered to guest lecture on a certain topic. Later on that year, the dean called and requested another lecture. The following year lead to a one-unit course. Today, I teach a three-unit, masters level course, “Medical Products and the Law,” on the USC medical campus. The course is simultaneously broadcast worldwide via the Internet. As the program caters to working professionals, teaching class on Saturdays one semester per year is entirely feasible and does not conflict with normal employment.

Have you ever thought about volunteering to lecture on a topic? Although such a step can appear daunting at first, you’d be surprised to learn how much information and insight you actually have to share, particularly to a nonlegal audience. After I spoke with a colleague about my teaching activities, she contacted the local University of California, at Irvine campus and learned that the local certificate program was in need of a co-instructor for their regulatory program. She, too, volunteered and now runs her own class in addition to her normal full-time professional job. Her network expands on a semester basis.

Continuing my quest for additional clients, I also registered with Adams & Martin Group, a local legal recruiting agency under Robert Half Legal. I made a point of developing a personal, first-name-basis relationship with my agency contact and called her each week to remind her of my availability. I was determined to not be just another file logged into their system.

Although corporations have not necessarily been paying recruiters for expensive full-time permanent placements in light of the current economic climate, an agency can market your legal skills on an hourly or temporary basis. As the agency maintained an extensive network of local contacts in Southern California, it could introduce me to in-house
counsel looking for assistance with their commercial contracts and regulatory matters. As a result, I was introduced to some amazing general counsel who could have possibly remained outside of my reach if it were not for the introduction afforded through the local agency. Temporary work also provided a steady paycheck that supplemented the cyclical nature of work that is sometimes experienced when working as a solo practitioner.

Also, consider joining and participating in the bar associations that support your practice profile. In my case, being an active member of the ABA and more importantly, the Section of Administrative Law & Regulatory Practice, has introduced me to some of the most incredible legal practitioners in our nation. I remember one of my first administrative law fall meetings, where a colleague suggested that I sit with him at the Section’s dinner. I ended up sitting next to Attorney General Janet Reno, and later shook hands with Justice Scalia. I felt as if I were star-gazing like a groupie at Nobu’s in Malibu. (If you’re ever in Southern California, let me know and I’d be happy to take you there. Lunch or dinner, there’s bound to be at least one celebrity in the restaurant at any time.)

Wanting to expand my network, I started to think about the other in-house counsel with pharmaceutical practices similar to my own. Searching the local nonlegal, industry-specific websites such as Biospace.com, I made a list of companies that worked on products in my desired area of the regulated pharmaceutical industry. I couldn’t believe the number of companies working in and for the pharmaceutical, medical device, cosmetics, and nutritional supplement industries all located within driving distance of my home. So many in-house counsel, but how to meet them? As a member of the Association of Corporate Counsel, I knew that certain committees actively supported many practice areas, but there was yet to be a Food and Drug Law Committee. I contacted the leadership and asked how to establish a Food and Drug Law Committee to allow for networking among in-house counsel practicing in the highly regulated industry. As a result of surveys and discussion, the local Southern California Chapter received the green light to start a Food and Drug Law Committee, and we are working on the very first event of its type for in-house counsel working in the highly regulated industry.

Looking back, law and regulatory practice have opened doors, as well as my eyes, to a practice that has been an incredible experience.
Essentially, there are no limits. As stated earlier, there are regulations each and every place you turn these days. Someone has to draft them, understand them, apply them, and provide their expertise so their regulatory guidance can be followed in fulfillment of the policy objectives. The options available to you in the field of regulatory practice are as endless as the regulations themselves. Enjoy!
Becoming an Association Lawyer

James W. Conrad Jr.

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. In
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.
Should you pursue state and federal opportunities to become an adjudicator of administrative cases?

The best way I know to address the theme of career paths in administrative law is to share some of my own experiences. I am currently an administrative judge with the U.S. Nuclear Regulatory Commission, after having served as a state administrative law judge and previously as an assistant general counsel in a state administrative agency.

My professional life in administrative law started from the “outside looking in,” and I have gained successively broader “inside” perspectives as my career has progressed. The more I have seen and done, the more interesting administrative law has become, and the more I have learned about how government works in action— how policy is made, laws are passed, rules are adopted, disputes are resolved. I’ve seen how our government is an ever-developing thing, sometimes seeming like the baby presented to Solomon, fought over until only the threat
of pulling it apart altogether can ultimately hold it together—sometimes less obviously fraught with conflict, but still always packed with tensions of various kinds. And sometimes, working inside government can be a setting in which one can serve the public in meaningful and rewarding ways.

I have had the good fortune to have worked in various contexts and roles in government, so that I have observed the [nonpartisan] “elephant” from quite a number of perspectives. I have found it to be a very fascinating animal. Perhaps my experiences can give some insights into what role might fit your personality and working style, and how you might find your place in the world of government and administrative law.

My first practical experience in administrative law came during my first job after being a law clerk, working as a legal aid lawyer. I represented clients, trying to make government work for them. Later, working with a nonprofit advocacy group concerned with juvenile law, I approached government from a broader perspective, advocating for change that could help the many systematically, rather than just one client at a time. When the grant money for that job ran out, I became an assistant general counsel for a state agency responsible for health and environment regulation and enforcement. In that role, I assisted non-attorney managers in writing rules, provided legal advice to various agency managers and professional licensing boards, and represented the agency in prosecutions of health professionals accused of regulatory violations, as well as in some benefits cases. Inside the state government I interacted with policy makers, as well as with those employees commonly referred to as bureaucrats. I learned that most state employees were sincere in wanting to serve the public. Of course, to some it was just a job, and some had become “burned out” over time. As in any large organization, each of these descriptions could be used in varying proportions at different times for just about every state employee.

My legal aid and state attorney jobs allowed me to develop my litigation skills, and provided me with the satisfaction that I could actually do this work, which had seemed just a bit scary at the beginning. Having these experiences gave me a perspective on how disputes get resolved in an adjudication context, on a very nuts-and-bolts level that has been valuable to me. I believe such litigation experience is very valuable for any young lawyer starting out, whether you end up with a career representing clients in various capacities, doing appellate work,
being in politics or otherwise in policy making, teaching law, writing about law, or being a judge and resolving disputes. I ultimately became a state administrative law judge (ALJ) and later a federal administrative judge. Without my prior litigation experience I would probably have been less likely to become a judge, and I know I would have been a less effective judge.

I got my job with the state agency after being told about the job opening by another potential employer who did not have an opening at the time. I could also have gone to the state personnel department and asked how to find job openings in my field(s) of interest. I expect that these jobs are generally listed online now. You also may find out about jobs that may not yet be listed, through friends and colleagues. But once you learn what is out there, you must follow up yourself and find your place through your own merits.

I became a state administrative law judge in Tennessee after friends and colleagues told me that the state office of ALJs, which heard cases for most of the state agencies, had a backlog of cases and was seeking some new judges. I had mentioned that, while I liked the “thrills” that came with the interactional back and forth of litigation, I had come to dislike the ups and downs as well as the “hired gun” aspects of being a litigator. My friends told me they thought my personality would fit the role of the neutral ALJ, who seeks to reach the result the law requires rather than necessarily just the result a client wanted. So, ultimately, I went through the application process and was selected as a state ALJ. I have been an adjudicator for the last 25 years, including a move to the federal government when I was appointed to be an administrative judge.

Why did I move to the federal government? I was ready for a move, and learned of an opening at the Nuclear Regulatory Commission from an ABA colleague. I had some limited background in science, and I believe this, along with my long experience as a state ALJ, helped me to win my current position.

Should you aspire to be a judge? Some judges I know of (at much higher levels than I) have left the bench because it lacked the more interactive pace of litigation and did not fit their personalities, or because it did not pay enough to support their families or lifestyles. But I have always found the job of being a judge to be interesting and engaging— hearing and learning the facts of cases, working to ascertain how the law applies to the facts to lead to a proper result, and managing cases
so that disputes can be most efficiently and meaningfully presented and resolved. And so I have stayed in this role, and hopefully improved my skills over the years, both in traditional and various less formal types of adjudication and, in some cases, serving as a settlement judge, after taking a course in mediation.

Being in the administrative judiciary is not all a bed of roses, of course. If you seek ego gratification, you won’t necessarily get it here, apart from the self-satisfaction of having done your job well. The administrative law judiciary endures the recurring theme of being (ever so subtly) looked upon as not quite a “real” judge. The facts are that ALJs serve essentially the same function as trial-level judges, although the specific procedures we use will vary from office to office and agency to agency. However, not being located within the judicial branch of government leads to various types and levels of confusion, with some ramifications.

As a member of the administrative law judiciary (whether you are called an administrative law judge, an administrative judge, a hearing officer, or some other title), you adjudicate disputes related to, for example, the proposed grant, denial, or renewal of licenses and benefits; alleged regulatory violations; and so on, in any of a wide array of substantive areas of regulation. In this role you become acutely aware of due process issues, to an extent that few can appreciate in any other role. It is your responsibility to see that proceedings before you are fair to all parties, when some participants may come in expecting just the opposite. It is satisfying when parties are pleasantly surprised at receiving a fair hearing, conducted by a judge who is interested and who has taken the time to learn something about their case and the law relating to it. But it can be frustrating when the perceptions of others seem to be based on an entirely different model of responsibility than that which you see for yourself. For example, is the ALJ a quasi-judge whose primary allegiance is to the agency, or does the ALJ have the same ethical duties of independence, neutrality, and fairness that are required of any judge?

Concerns have arisen around such questions, including about inappropriate attempts to influence members of the administrative judiciary. Some judges have job security that protects their ability to do their job effectively and independently, without fear or favor, but others are essentially at-will employees. There are a variety of situations and office structures for adjudicators. At the state level (but not exclusively
so), there have sometimes been perceptions that it is appropriate for some agency managers to direct judges in, for example, applying agency policy “correctly,” even when the actual law may be to the contrary. Although this may not reflect any evil intention, it is not an easy situation. The judge’s integrity and skill at addressing such challenges intelligently and effectively may become critical factors in performing the job well, in a manner worthy of respect.

In all of these respects—the good, the bad, and the ugly—a member of the administrative judiciary has a unique perspective on how government works. In Tennessee, I heard cases in a state central panel of administrative law judges, adjudicating for a large number of agencies. I saw through the disputes that came before me many of the realities of how government operates, more or less from the inside. My involvement with the ABA led me to join with others to bring about improvements in government. The interaction of these activities and efforts led to fresh insights about, for example, why the founders of our country fought and worked so hard to create a government based on principles not only of liberty, independence, and equality but also of limited power. They realized that power does corrupt, and thus it is important to have limits on power, checks and balances, separation of powers and functions, and much more that flow from these principles. An adjudicator sees these issues from a unique perspective.

If any of this sounds interesting to you, you just might like serving in some role in the administrative law side of government. You won’t make as much money as you would in a large law firm doing corporate law, for example. You will no doubt experience some level of frustration and stress. But if you look around, you may be able to find your own niche, from which you can have a good view of how things really work inside government, and maybe even the chance to have a meaningful impact.

My advice for how to move toward an ALJ position is get some experience in litigation, in order to get an understanding of how it works, on the ground from a practical perspective. Don’t necessarily be averse to starting out in a lower-level position than you might ultimately want, because the experience gained in such jobs can provide perspectives you may not gain anywhere else. Rather than just casually networking at meetings, become involved in activities in which you have a real interest, where you can demonstrate some of your skills and abilities. Of course, stay alert to what is available. Be flexible, and try
out some different roles until you find one that fits you, and in which you think you can serve.

Somewhere along the way, I learned that government is not so much a matter of what is the best (utopian visions can lead to bad outcomes), but of what is the least bad, and that what is the government is an ever-evolving thing. Changes come and go in cycles, so there can be stresses, depending on which way things are moving at any given time and how such changes may fit with your individual approach and viewpoints. But that is how it works, and you just keep at it, doing your job, and working with others to improve the system more broadly. And from time to time you experience the satisfaction of feeling you have really served the public and contributed to the greater good in some way, significant or small, recognized or not. And that can be an exciting thing.
Should your career include service as a government antitrust lawyer?

A government antitrust lawyer’s job is to protect free enterprise and the American consumer. Our system of free enterprise has allowed us to commercially expand, and enabled our industries to be at the forefront of commercial innovation and influence worldwide. With that, however, comes the need to protect individual consumers from dominant industrial forces that can restrain competition. Competition benefits consumers by providing an incentive for business to improve the quality of their goods and services, innovate, and keep prices low. A government antitrust lawyer is always on the lookout for business activities that reduce competition and can hurt consumers. Such actions can include mergers that significantly limit the players competing in an industry, non-merger agreements among competitors that limit competition, and actions to create or maintain a monopoly by unreasonably excluding potential competitors or impairing their ability
to compete. The success of antitrust law enforcement can be measured by the extent to which consumers have access to as diverse a selection as possible of goods and services at competitive prices.

Government antitrust lawyers work at both the state and federal level. On the state level, state attorneys general enforce the federal and state antitrust laws in their respective states. On the federal level, the FTC and the DOJ share jurisdiction for federal antitrust enforcement. Jurisdiction over specific antitrust matters is primarily apportioned among these two agencies based on industry, but only the DOJ has jurisdiction over criminal antitrust violations. The FCC and the Federal Energy Regulatory Commission (FERC) also employ antitrust attorneys who work to preserve competition in the communications and energy industries respectively.

Government antitrust lawyers investigate complaints of anticompetitive conduct and, if necessary, litigate an administrative or federal complaint against the target(s) of that investigation. They also review mergers and, if necessary, file litigation to block or unwind certain mergers. Antitrust investigations and merger reviews are highly fact-intensive. This means most investigations feature numerous documents and numerous fact and expert witnesses. In antitrust, there is the added component of economic analyses. Besides developing a concise legal theory, in order to successfully develop an antitrust investigation or case, the enforcer must be able to show the anticompetitive effects of the merger or activity upon the market and consumer. Examples of anticompetitive effects include raised prices or the elimination of competitors. In order to assess likely anticompetitive effects, antitrust lawyers work closely with economists. Both federal antitrust agencies have staff economists that assist the attorneys in developing cases.

Antitrust lawyers in the public sector also play an important role in developing antitrust policy. Both federal agencies have policy divisions where lawyers and economists study and research competition in key industries. The end product of such study and research includes reports to Congress, business and consumer education, and public advocacy. Government antitrust attorneys in the federal agencies also provide technical assistance to foreign competition agencies, usually in countries with emerging markets that have recently developed competition agencies. Many antitrust attorneys in government move between investigatory/litigation positions and policy roles in their careers.
To prepare for a career in antitrust law, it is important to have a basic understanding of economics and business. Many young antitrust lawyers at the FTC who do not have an undergraduate background in economics take a graduate econometric course at one of the Washington area universities, or at the USDA Graduate School, an academic program for federal employees. Basic knowledge of business strategy is helpful as well. I find frequent reading of business publications like *The Wall Street Journal* to be helpful in learning about industries and specific companies.

How should you prepare? In law school, taking an antitrust law course is helpful in showing your interest in the field when interviewing with agencies. The course also provides a starting point for understanding antitrust jurisprudence. Although not necessary, it would also help to take a regulatory course dealing with a specific industry, in the event that there is a specific industry on which you might like to focus your antitrust career. For example, preserving and increasing competition in the health care industries is a big issue today. Developing a basic understanding of the health care industry or of food and drug regulations can help you to understand the role that competition can play in those industries. Such an understanding will help you to apply your antitrust knowledge to those industries.

I have found this career option to be particularly enjoyable. It has allowed me to combine my strong desire to serve the public with my interest in business. As a consumer, I also especially appreciate the importance of maintaining a competitive and vibrant marketplace. The diverse topics and complex projects are an interesting professional challenge. If this sounds attractive to you, study the field, identify federal or state opportunities, and present your application with a cover letter indicating why antitrust work would be a good fit with your background and your career goals.
Becoming a Regulations Lawyer

Fred Emery and Andrew Emery

Should your career include work on government regulations? The portion of administrative law and procedure that we call “regulations law” is not dull, because it is all about solving important issues with very real and visible results. Today’s hot issues are the environment, energy, global warming, and health care; but long before they are solved, other hot issues will inevitably emerge. It is also not dull because there are so many legal issues that are relatively new, that are yet to be resolved, and that therefore are ripe for you in the next generation of lawyers to tackle.

As the famous D.C. Circuit Judge Harold Leventhal once said, “In Administrative Law, complexity has a bright future.” Former administrative law professor Antonin Scalia said in informal remarks before a 1989 speech at Duke University, “Administrative Law is not for sissies.” We tell new lawyers thinking about their future that, however difficult administrative law is, its challenges are more than offset by how interesting this practice of law can be.
If the reason why rulemaking is both interesting and challenging is not obvious to you, think of how government rules will impact a typical day in your life. From the time you wake up (time zones are based on federal regulations), the safety of the food you eat, the cleanliness of the air you breathe and the water you drink, and the safety of your means of transportation, are all affected by either federal or state regulations, and often by both. In our complex world it could not be otherwise, no matter how much some may pine for the good old days. In fact, the good old days were neither simple nor free of regulation. The first Congress delegated rulemaking authority to the executive branch for issues like tariffs and veterans benefits. We are now in the middle of the 100th anniversary of the “Progressive Era” that gave us most of the safety regulations for foods that we now take for granted, as well as regulations in transportation (hazardous materials by rail) and banking (the Federal Reserve).

Thus, a career in rulemaking, whether inside or outside government, calls upon all aspects of a lawyer’s knowledge and education. While a regulations lawyer does not need to have a technical degree in the area of focus of his or her agency or client, the successful lawyer will need intellectual curiosity: Why? What alternatives are there? How is this authorized? Can this be justified on facts in the record?

At the heart of our system of jurisprudence is the concept that, with rare exceptions, we do not allow our government to do things to people without “some kind of notice” and “some kind of opportunity to be heard.” In informal rulemaking (roughly 90 percent of all rulemaking at the federal level), the minimal requirements for “notice and opportunity to be heard” are quite minimal. Notice can be accomplished by actual notice to those affected, or by publication in the *Federal Register*, which acts as constructive notice. The minimal opportunity to be heard requirement is solicitation of written comments to the agency. The 5–4 *Merrill* decision of the 1947 Supreme Court upheld the constitutionality of constructive notice through publication in the *Federal Register*; Justice Jackson dissented, saying that if a farmer like the plaintiff in that case “were to peruse this voluminous and dull publication... he would never need crop insurance, for he would never get time to plant any crops.”

The new lawyer should not rush to assume that he will make the key policy decisions in each rulemaking project. Many lawyers do a disservice to their agency by telling their clients what they can or
cannot do, in situations where the law is not clear—a situation virtually universal in many administrative statutes. Lawyers should not give advice in a way that makes the client think that the lawyer is dictating policy. However, that does not mean that a lawyer does not get involved in the process of agency policy making. If most policy issues were clearly thought out, alternatives considered, and so forth, the lawyer’s role might well be limited to giving his opinion on the agency’s legal authority and compliance with legal process requirements—but that rarely happens. Also, the lawyer’s advice is needed in the analysis of many potential impacts, on small businesses, the environment, and so on. For example, while economists are essential to measuring costs and benefits, the decisions that flow from such calculations are usually a mixture of legal issues and policy choices.

Another inviting aspect of this career path is that the field is young and receptive to change. While the executive branch has been making rules under congressionally delegated authority since the 1790s, most of the statutory law in the rulemaking area has been made in the last 75 years, and most of the key case law in the last 40 years. The Federal Register and Code of Federal Regulations did not exist until the late 1930s, the Administrative Procedure Act (APA) was passed in 1946, and rules were rarely litigated until the 1970s. Also, many of today’s frequently used rulemaking documents (e.g., advance notices of proposed rulemaking, interim final rules, direct final rules, supplemental notices of proposed rulemaking) were not anticipated by the APA, but were inventions of smart and creative federal bureaucrats (most likely, lawyers). You could be the next such inventor.

To prepare yourself, spend the hours necessary to achieve excellent grades in administrative law. Write articles and essays, enter the many prize contests for law students writing in administrative fields, peruse a few issues of the Federal Register, and check the Code of Federal Regulations for topics near and dear to you, like student loans, environment, product safety, and so forth. If internships are available near you, volunteer and learn what makes a federal or state rulemaking office work as it deals with the implementation of laws. Join the ABA Section of Administration & Regulatory Practice and get involved with one of the subject matter committees that intrigue you. The future is in rule-making: will you be one who makes things happen, one who watches things happen, or one who wonders what happened?