

## MEMORANDUM

**TO:** Administrative Law Section Governing Council

**FROM:** Ad Hoc Strategic Plan Implementation Discussion Group (Jeff Rosen, Joe Whitley, Jamie Conrad, Anna Shavers, Shawne McGibbon, and Brian Callanan)

**DATE:** October 29, 2013 [updated October 2014]

**RE:** Implementing the Administrative Law Section Strategic Plan

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In August 2010, the Administrative Law Section Council approved a proposed Strategic Plan for the Section, which set out four major goals. Those were:

1. Enhance the Section's Role as the Leading Source of Expertise in Administrative Law and Regulatory Practice (by 2013).
2. Increase Section Membership to 8000 Lawyers, 7000 Law Students, and 200 Associate Members (by 2013).
3. Significantly Increase Non-Dues Revenues (by 2013).
4. Develop New Leadership Cadres (by 2013).

While the dates have not been met, the objectives presumably remain worthwhile. But they require consideration of more specifics, details, and means of implementation than has occurred to date. With that in mind, below is an outline of some ideas that have been developed for consideration to be implemented during the next three year window of time. Having been approved, a key element will be to immediately identify Council Members and others who will agree to lead each new initiative below that is to be implemented.

Below, we address ten major topics for the Section:

I. **PROGRAMS.** Enhance and expand the Section's programming, to provide members with the largest possible set of opportunities and interests.

1. Secure long-term locations and dates for the Section's "permanent" conferences: the Fall Administrative Law Conference (Oct/Nov), Homeland Security Law Institute (March), Annual Administrative Law & Regulatory Practice Institute (April), and identify locations at least two years in advance for the annual Spring Conference (May).

-- Longer lead times will facilitate better access to top level keynote speakers, and to marketing of programs (though the program content will continue to be very current at time of presentation)

2. Add a new “Supreme Court Adlaw Docket” series, in which we would (a) notify members by email whenever an adlaw case has cert granted, (b) try to arrange a telecom seminar at which knowledgeable participants or an expert would tell our member audience about the issues, and (c) after each decision, arrange a panel discussion about the case with the lawyers involved in the case, whether as a “brown bag” or other forum. [Adam White and Brian Callanan have agreed to lead this activity.]

3. Add a new “ALR Lead Articles” series, in which the authors of the lead articles in each quarter’s ALR would present a lunchtime telecom briefing summarizing their article and its key points, and field questions, for 30 minutes. [This is being reviewed with the ALR faculty advisor, and we await further input.]

4. Add a new once-per-year “Great Debate” informal dinner event, with prominent lawyers to debate a matter of current legal interest.

5. Formalize a “brown bag” lunch series as a “Regulatory Policy Officer Forum”, at which we invite the RPO from federal cabinet departments to offer perspectives on current regulations on a regularly scheduled basis, to be coordinated with Section Committees. [Jennifer Smith has agreed to lead this activity.]

6. Add a new Regulated Entities General Counsel Annual Forum, at which our new Advisory Board of GCs would select a topic of concern or interest and identify speakers, for a panel at one of the annual conferences (probably the Rulemaking Institute). [Our first such panel took place in 2013.]

7. Partner with outside groups who already run regularly-scheduled programs about administrative law, to jointly sponsor telecoms and brown bag events, in order to offer additional content to our members, as well as speaking forums. Possibilities might include local law schools or public policy schools, legal organizations (American Constitution Society, Federalist Society), DC Circuit Historical Society, Association of Corporate Counsel, or AALS. [Amar Sarwal has agreed to lead this activity.]

8. Coordinate with seven key related ABA Sections about joint programming of brown bags, telecons, or new events: Environment/Energy & Natural Resources Section; Public Utility/Communications & Transportation Section; Labor & Employment Section; Government and Public Sector Lawyers Section; Aviation and Space Law Forum; Communications Law Forum; International Law Section; and Business Law Section.

9. Remind Committee Chairs of the requirement that every committee should sponsor and arrange at least one “brown bag” telecom conference, or program panel each year (or run one of the new proposed programs listed above). Some committees, such as Transportation, also have newsletters, which should also be encouraged.

II. TRAINING PROGRAMS FOR YOUNGER LAWYERS: An opportunity for Section experts to offer value to members, improve the profession, and burnish their own credentials.

1. Continue Rulemaking 101 at Spring Rulemaking Institute and Fall Conference.
  - Increase marketing to law firm training directors, and possibly package with Lubbers' Guide to Federal Agency Rulemaking book and the Federal Administrative Procedure Sourcebook
2. Create new Annual Adlaw Workshop CLE program for younger lawyers
  - Bundle books on Judicial Review (Herz/Duffy), Adjudication (Litwak), and the Federal Administrative Procedure Sourcebook
  - Perhaps partner with others, such as a law school
3. Create a "liason" program, starting with an existing Section member to act as a liason at each of the 50 largest DC law firms, and then others, and then other cities, and a liason at each cabinet department and major independent agencies, from existing member lists, to *notify* people at their organizations of Section CLE programs and training opportunities.
  - Work with liasons and others to develop a list of law librarians and training personnel at firms and agencies, to target for promoting the participation of their organizations' lawyers for programs and to buy publications.

III. WEBSITE UPGRADE. Revamp ABA Adlaw site into a much-needed "Adlaw Portal", in addition to its destination for ABA announcements, rosters, newsletters, and precedents.

1. Post or provide links to relevant ACUS, GAO, CRS, and SBA reports.
2. Link to all available Adlaw resources: statutes, CFR, Federal websites (e.g., regulations.gov, Thomas, reginfo.gov, agency websites), adlaw libraries, and all relevant law reviews (eg, Yale Journal on Regulation).
3. Link to all possible adlaw websites (e.g, UPenn program on regulation) and blogs
  - Consider whether to develop "featured partner" relationships, in lieu of or in addition to ABA "notice and comment blog"
4. Full inventory of ABA Resolutions and policy germane to Adlaw, and of Section's own policy precedents and letters.
5. Provide bios of past Adlaw Section leaders since 1932
  - Consider creating or transcribing some "oral histories" of longtime Section members, akin to the DC Bars' "Legends of the Law" series
6. Post "famous" adlaw history materials from the past, such as the Section's 1938 Report urging restraints on New Deal agencies, the ABA's proposed Code

of Federal Administrative Procedure, Dean Landis' memo to President-elect Kennedy about regulatory agencies, the 1979 ABA Regulatory Reform report, and/or some landmark law review articles, especially old ones from the 1920's

7. Can we connect the website to a social media forum in which interested members can post questions and look for answers about adlaw topics?

IV. PUBLICATIONS. In addition to the existing activities of our committee, we might try to provide additional value to members.

1. Identify books and publications by other ABA Sections (especially the seven Sections identified in part I.7. above), such as their Annual Developments volumes, and determine if there would be ways to make available to our Section's members for free or at a bargain price.

2. Create a project in which Section members are asked to vote to identify the 25 most important cases in Administrative Law, hopefully generating interest and discussion about adlaw, and then turn the top 25 into a ongoing series in the Adlaw News, counting down from #25 to #1, perhaps in groups of three, with a short summary of each key decision.

3. Ask a member of the Section to write an article on the history of the Adlaw Section since 1932. (This would go beyond Jeff Lubbers' short 1998 article at 50 ALR 157.)

4. Generate a target list and ask prominent regulators, lawyers, and perhaps judges to provide very short articles for the Section's Adlaw News and/or committee newsletters.

V. POLICY/RESOLUTIONS. Aim to develop some consensus proposals on core administrative law topics. (This can also be a good way to enable some collaborations between younger and more experienced Section members.)

1. Could the Section propose resolutions derived or analogous to ACUS Recommendations 2011-2 "Rulemaking Comments" (e.g., calling on agencies to allow reply comments), 2012-3 "Midnight Rules", or the upcoming Social Media/Interactive Dialogue Rulemaking?

2. Assign a Council Member to canvass committees/members about a new round of potential projects/topics that the Section could recommend, either as standalone resolutions or in some cases for consideration by ACUS as projects there.

3. Create additional process for the consideration of policy proposals, rather than the current way in which all of them are funneled directly to the Council:

-- Twice per year create open forum special meetings at ABA office for debate/discussion of policy proposals by anyone who wants to participate

VI. COMMITTEES. Consider ways to energize, re-organize, and infuse motivated personnel.

1. Create a General Counsel Advisory Board to the Section Officers (Dan Troy, Chair; nine others have agreed to participate).
2. Create an Advisory Board of Past Chairs who are willing to be on an email list from which the current officers can solicit reactions, insight, advice as to past experience and observations.
  - Schedule 2x/year “Chairs Roundtable” conference call
  - How should this group relate to the Section Fellows, if at all?
3. Strengthen the Government Functions Committees (e.g., antitrust, energy, health law, IP, international law, housing, communications), by asking each one to focus directly on adlaw aspects of those areas. For inactive committees and/or to promote more opportunity and interest in participation, recruit new chairs and vice-chairs periodically and regularly. Since every one of these overlaps with another ABA Section, allow these committee chairs to also serve the liason functions, to promote programs and newsletters for both that will expose ours to a wider audience and bring additional value from other Sections to ours.
4. Move the Government Relations and Legislative Process Committee to the “Administrative Process” side from the “Government Function” side of the committee structure, and try to enhance and upgrade it to make it an attractive activity for lobbyists and other government affairs lawyers. Consider whether to offer special programs for this group.

VII. SECTION ACTIVITIES SUPPORT. Identify ways to augment the support provided by the Section’s professional staff.

1. Generate a year-round program of interns from colleges and law schools, who could help with programs, marketing, and the website, as well as attend and participate in the Section’s activities and network with practicing lawyers.
2. Arrange to record ALL Section programs, and--after a time delay to ensure that live attendance is advantageous--then post *all* such programs on the Section’s website, sometimes free for members and sometimes with charges. (Will need to develop guidelines for timing and charges.)

VIII. COUNCIL MEETINGS/AGENDAS. Meetings would convert to something more akin to Board of Director meetings.

1. Schedule Council Meetings for a single, full day, rather than two consecutive mornings.
2. In general, limit reports to be in writing, in succinct 2-page memos. The Council Meeting would assume prior reading, and would be limited to questions about the report.
3. Focus meeting agenda on a modest number of major issues, generally about upcoming projects or activities, which would begin with a presentation to the Council by a responsible person (often a Council member or Officer), before discussion and then voting to approve or disapprove.

IX. MEMBERSHIP: There are two keys to this topic: (1) Continuing to take steps to retain current Section members, and to expand recruitment efforts to bring in new Section members (and perhaps entice former Section members back), including by *direct engagement* with law firms, agencies, and law schools; and (2) drive attendance at programs and purchases of publications, which in turn would increase membership.

1. In recent years, the Section has not made sufficient systemic efforts to reach out to private practitioners in Washington and elsewhere, to government agency counsel, or to administrative law scholars and establish a program of in-person meetings at firms, agencies, and law schools to promote the Section and its value to lawyers and law professors. As noted earlier, to remedy this situation, the Section should create an initial “liason” program with existing members at key entities: (a) a liason at each of the 50 largest DC law firms, and then others, and then other cities, (b) a liason at each cabinet department and major independent agencies, plus (c) a liason to faculty at 50 law schools, or an organization of law professors. [Perhaps our Section Fellows could be called upon to help with law schools in particular, and with “semester in DC” programs.] The liaisons would primarily be responsible for forwarding program announcements/invites and similar announcements, to all the lawyers at their organization. At some juncture, we might ask them to help facilitate a direct personal presentation at their organization by our Membership Chair or other Section leaders.

-- Focus on D.C. first, but then “near-D.C.” such as Baltimore, Wilmington, Philadelphia, Richmond, and to locales where Section has strong numbers or prominent participants

2. Occasionally, make some “brown bag” programs available for free, and then invite attendees to join the Section. This may entail identifying “hot” topics that would be likely to attract younger lawyers, such as IT and IP issues related to administrative law, as well as topics that other law-related organizations may be interested in cosponsoring, as described above.

3. Expand membership opportunities for lawyer/lobbyists: create a free half-day program on the “law of lobbying”, and then invite all attendees to join the Section and the “Government Relations” committee.

-- In addition, consider ways to add *non-lawyer members* who are interested in regulatory practice and administrative law, and perhaps create a committee of such members. (Might consider whether to focus on economists, political scientists, and others.)

4. At the Section's annual conferences, have membership information at each seating position, and if feasible, a desk for registering as a member.

-- Attend other Section's events, and make membership in ours available at those

5. "Mix and Mingle Events": The Section should continue these, but where possible try to connect these to some events with other gatherings of lawyers, besides our own, to draw in new lawyers. (One suggestion was to provide different color name tags for members and non-members, so that members could reach out to new guests.)

6. Ensure specific outreach and other projects for membership retention.

X. SPONSORSHIPS. What can we do to attract more financial sponsorship of Section activities?

1. The ABA has created a new Director of Sponsorships position, so the Section should connect with that resource.

-- Possibly consult with Intellectual Property and Science/Technology Sections for insights as to their successes on sponsorship issues

2. ABA staff will need to compile a short guide to what sponsorships the Adlaw Section has had in recent years, for which events, and how the Section obtained them, so that we can try to replicate and not reinvent the wheel.

3. Are there additional commercial opportunities that might be available? Make potential sponsors aware of opportunities with the Section.

4. Consult with the new GC Advisory Board for any insights into this issue or experience they may have with other organizations.