What a year! What an experience! And, we’re picking up speed!

There is no way to express the exhilaration that comes with the challenge of being Section chair and there is no way to fully express my appreciation to all those dedicated, smart people who have honored me with the opportunity of working with them. For me this year has been a humbling, satisfying, and, at times, a “character building” experience. “Pride” in the Section, and its individual members, expresses my feelings at the end of my year as Section chair.

Article IV of the Section bylaws provide that the chair shall make a report of the Section’s activities for the previous year. This column will do that and make my report at the Section Annual Business Meeting much shorter—for which we should all be thankful.

This year, as your chair, I have tried to build on the accomplishments of the Section and its leaders and establish a solid base for the Section to achieve continued growth in both membership and finances. Thanks to the hard work of many Section members, they have, once again, brought distinction upon the Section.

Accomplishments

• We have revitalized the state and local procurement focus of the Section by dedicating the spring educational meeting to be the Annual State and Local Procurement Symposium, with the goal of growing it into an institute comparable to our Federal Procurement Institute. Don Featherstun’s leadership and management skills were largely responsible for making the spring program a resounding success this year. All of the Section officers have committed to the growth of the Section’s presence in state and local government contracting, so this is not just a flash in the pan. We are on the path to having the Section be the home for lawyers, administrators, and practitioners in state and local contracting and procurement.

• We have more state chairs now than ever before, thanks to the hard work of Jennifer Dauer and Rocco Maffei.

Karen Walker and Anne Donohue have revitalized the state and local IT Procurement Committee. Thanks to Missy Copeland and John Pachter we have grown the state law database to include almost all states, and Norm Thorpe, Larry Ethridge, Margaret McConnell, and John Miller have breathed new life into promoting the Model Procurement Code. The Section continues to make contact with states and municipalities to introduce the code and foster its acceptance. The regulations to accompany the code are now available on CD, thanks to John Miller.

• We have seen our corporate, law firm, and private sponsorship program grow beyond our wildest dreams, thanks in large part to Pat Meagher, Jennifer Dauer, and Dave Hirsch. Our sponsors pay us a high compliment with their support. Our sponsors believe in what we do and what we can do, and they want to be identified with our success. We have not and will not disappoint our supporters.

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NEWS FROM THE CHAIR
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• The Section has record-level financial resources, thanks to our sponsors, including another generous gift by Alan and Millie Peterson, our growing membership, subscription fees for our acclaimed online CLE programs led by David Innis, and increasing returns on our educational programs.

• Jennifer Dauer has taken ownership of the Section’s formal diversity program. This program will give the Section the focus it needs to reap the benefits of a diverse membership, both in numbers and participation in our leadership. This project should be ready for consideration at the Annual Meeting in Hawaii.

Comments and White Papers
The Section has been extraordinarily active this year with the comments and white papers it has provided to various parts of federal and state and local governments, including the Advisory Panel on Acquisition Laws and Regulations created by section 1423 of the Services Acquisition Act. Some of these comments and white papers are:

• Submission of Cost or Pricing Data on Noncommercial Modification of Commercial Items—GSA
• Questions Posed to the Section of Public Contract Law Battle Space Procurement Task Force—Principal Deputy to the Assistant Secretary of the U.S. Army
• Staff Discussion Paper Regarding CAS Exemption for Contracts Executed and Performed Entirely Outside the United States—Cost Accounting Standards Board
• Additional Contract Types, Proposed Rule, FAR Case 2003-027—GSA
• Title XIV “Contracts Dispute Enhancement” in the National Defense Authorization Act for Fiscal Year 2006—members of Congress
• Federal Acquisition Regulation; Payment Under Time and Materials and Labor-Hour Contracts, Proposed Rules—GSA
• Statutory and Regulatory Authority for Governmentwide Acquisition Contracts and Multiagency Contracts—Advisory Panel on Acquisition Laws and Regulations (1423 Panel)
• NRO Acquisition Manual Clause 52.244-002 Subcontract Reporting, Monitoring, and Consent—NRO
• Veterans Affairs Acquisition Regulation; Plain Language Rewrite; 71 Fed. Reg. 2342 (January 13, 2006); Comments in Response to RIN 2900-AK78-VA
• Advance Notice of Proposed Rulemaking, GSAR ANPR 2006-N01, 71 Fed. Reg. 7910 (February 15, 2006); GSAR Revision Initiative—GSA
• Proposed Amendments to the Rules of the United States Court of Federal Claims—COFC
• NRO Acquisition Manual Clause 52.244-002 (Draft 9 March 2006) Subcontract Reporting Monitoring, and Consent—NRO
• Presumption of Good Faith That Some Judicial Decisions Have Applied to Government Employee Conduct in a Contractual Environment (seeking blanket authority)—1423 Panel

22. See FAR 3.104-6, Ethics Advisory Opinions regarding prohibitions on a former official’s acceptance of compensation from a contractor; see generally FAR 3.104-3.
23. FAR 3.104-6(d)(3) (emphasis added).
24. For example, the lifetime ban under 18 U.S.C. § 207(a)(1) (prohibiting certain agency officials from communicating on behalf of a specific party to an agency or court in connection with a particular matter in which both the official and specific party were personally and substantially involved during the official’s employment with the government).
25. In its simplest manifestation, an organizational conflict of interest arises when a contractor is hired by the government in such a way that it is placed in a position that provides it with a material advantage over one or more competitors, either with regard to competitions for contracts, or with regard to approvals or other agency action that either the contractor or the competitors might require. See, e.g., FAR Subpart 9.5.
• Proposal for Reform of Interest Provisions (seeking blanket authority)—1423 Panel

We will now continue our discussions on the Principle of Professionalism in Public Procurement at the Council Meeting in Hawaii. The proposal is for the Section to adopt this principle and then seek to have the ABA adopt it as one of our contract principles.

Government and Corporate Practice

Another initiative upon which we have made progress this year is providing greater focus on the practice of government contract law in the government and corporate areas. The Section should continue this initiative to ensure that we have all sectors of the practice of government contract law represented in our committees and leadership. Our strength and credibility lie in our intellectual resources and the diversity of perspectives that influence our comments, white papers, and the depth of our discussions. The Section is the home of balanced opinions and respect for the interests of all involved in the public procurement process, lawyers and nonlawyers.

Recognition and Awards

This year we have had a number of initiatives to recognize the leaders and mentors in the Section to hold them up as examples of professionalism to be emulated by all. The Section has applied for approval from the ABA Board of Governors to establish the Section of Public Contract Law Fellows Spirit of Leadership Award. We anticipate making this award for the first time at the Annual Meeting. The State and Local Advisory Panel to the chair has placed renewed focus on the Davidson Award for accomplishments in the area of state and local procurement and a Section member will be recognized at the Annual Meeting for his or her sustained contributions in this arena.

Standing Committees

The Council approved establishment of three new standing committees: Publicity, Public Contract Finance and Transactions, and Battle Space and Contingency Procurements. Susan Mitchell has done an extraordinary job as the first chair of the Publicity Committee and has blazed the trail for methods of Section advertising when supporting the First Annual State and Local Procurement Symposium. The lessons learned creating the advertising for the symposium will be applied to create interest and increase participation in Section programs. The Public Contract Finance and Transactions Committee cochaired by Sandy Hoe, Steve Sorett, and Christopher Lord has been an instant success and proves that when we create a product, after listening for the need, we can grow. The Battle Space Task Force, which provided an exceptional white paper to the Army, in response to its questions on battlefield procurement practices, has been established as a standing committee and will be called the Battle Space and Contingency Procurements Committee to reflect its added areas of responsibility.

Educational Programs

The educational programs have been great successes, thanks to the incredibly hard work of our program chairs: The fall program in Sedona, chaired by Dick Bednar and Tony Underwood, was titled “How Effective Is Your Compliance Program? A Closer Look at High-Risk Areas”; the 12th Federal Procurement Institute—Government Contracting in a “new” Era: Flexibilities, Constraints, and Realities, chaired by Peter Balch, Ed Gassman, Liz Fleming, Karen Manos, Scott MacKay, and Lynda Troutman O’Sullivan, held in Annapolis, can brag of record attendance and rave evaluations; the spring program held in San Diego, chaired by Paul Dauer and Don Featherstun, was titled “Navigating the Federal Influence on State and Local Procurements” and set a new standard for attendance at the Spring Meeting. The Annual Meeting, cochaired by Bill Crowley, Gerry Doyle, Mark Colley, Dan Doogan, and Mark Hanson promises to be an excellent program, which is described in detail elsewhere in this newsletter.

Delegate Added

The ABA House of Delegates authorized a second delegate for the Section to the House this year. A special nominating committee selected, and the Section Council approved, John Pachter to fill this position. John also submitted a letter to ABA on behalf of the Section urging expansion of the joint dues program to all sections and divisions. John joins our present delegate and one of the true giants in our Section, Mary Ellen Coster Williams. Mary Ellen is a tireless proponent of the Section’s interests and represents us with intelligence, energy, and grace.

In Recognition

Although there is insufficient space here to recognize all of the outstanding performers in the Section, I would like to say a special thank-you to a few:

After 12 years of faithful and exemplary service, Carl Vacketta is stepping down as editor-in-chief of the Public Contract Law Journal. Carl has built this publication to be the premier resource for intellectual discussion of public contracting and created a stellar organization of editors, advisors, and members. Our heartfelt gratitude to Carl for his dedication to the Section and devotion as a mentor to an untold number of law students participating in the Journal.

David Kasanow, chair of the Regulatory Coordinating Committee, has distinguished himself by identifying regulations to the Section’s committees for comment and discussion. He also coordinates the review of the draft comments by the Section Council. He has been on the job every day and always has the extra energy and drive to get the comment signed and off to the correct agency in a timely manner. Dave’s support has been invaluable.

Brigadier General David Ehrhart, USAF, has been an extraordinary leader this year as a Council member, cochair of the General Counsel’s Committee, and representative of government perspectives as the Council con-
considered such issues as the Principles of Contract Responsibility and the presumption of good faith and fair dealings. No one better exemplifies the philosophy of “doing the right thing” and his involvement, along with that of Ty Hughes from the Air Force General Counsel’s office, shows the importance of having members from government involved in Section discourse and comments.

Stu Nibley deserves special recognition for chairing the BCA Working Group, which will provide observations and recommendations for the new Civilian Board of Contract Appeals that was created by Congress this year and consolidated the various civilian boards of contract appeals. He also provided extraordinary leadership in our discussions on the presumption of regularity and good faith, including authoring a paper “Unraveling the Mixed Message Government Procurement Personnel Receive: Message... . . .” His dedication to meeting the needs of the Section on these and other issues was unfailing and of the highest quality.

Mark Langevin has edited and produced a superior Section newsletter again this year. This is a really tough job, and I apologize for the grief I have caused him with my chair’s column. Many define the Section by what they read in our newsletter and Mark’s quality product speaks volumes about the Section.

Jennifer Dauer has continued her leadership in the Section in her roles as cochair of the State and Local Procurement Division, cochair of the Membership, Diversity, and Outreach Committee, vice-chair of the Outside Funding Committee, and vice-chair of the Model Procurement Code Committee. She has been a go-to person this year for getting things done on all of these committees.

My thanks also go to the committee chairs and vice-chairs who have taken the responsibilities of their offices seriously and with a sense of responsibility to their committee members and the mission of the Section. For committee chairs the opportunities are great, the work is hard, but the rewards are many as they see the fruits of their labors impact the public procurement process.

Your Section Council members have shown admirable dedication this year and executed their responsibilities in a timely and thoughtful manner. My thanks to you for your responsiveness when reviewing and making final edits on our comments and white papers and your patience as we have addressed sensitive issues.

I have been particularly blessed with Section officers who were always willing to work with me side by side. Michael Hordell will be a great chair next year. He has been preparing his agenda and is striving at the traces to move the Section to even greater achievements. Pat Meagher has been available for every assignment and provided a sense of history and calming judgment to some intense situations. Michael Mutek has not only been an exceptional officer as secretary but he has continued providing guidance and substance to a number of committees. He also published a monograph on teaming agreements for the Section. Carol Park-Conroy has been a true steward of the Section’s interests by attending to our budget and finances. In addition, she was always available to work on special projects and providing leadership and perspective. All of your officers have been fully engaged all year and have never faltered, even under some very demanding situations. I am eternally grateful for their support and counsel. Any success enjoyed by the Section this year would not have been possible without their dedicated leadership. The Section is in good hands for the years to come with their leadership.

“Saint Marilyn” is truly an amazing woman. Marilyn Neforas has been our Section director for more than three decades and she never fails to show absolute commitment to the Section and each of its members day by day and year after year. Yet, her imagination and willingness to suffer the idiosyncrasies of each succeeding chair (especially mine) are legendary. Marilyn’s patience (most of the time) with my expectations and the pressure to get things done was more than I deserved. There were times when her firm guidance was necessary. (I must say I admit this with the benefit of hindsight.) Marilyn never loses focus of the Section’s mission and the image we have to project to the public contracting community. Our quarterly programs have uniformly been of high quality because of her insistence on nothing less than the best that panel members can produce. I can only give my heartfelt thanks for the hours and hours we have worked together, frequently late into the night, and the guidance Marilyn has provided.

There were many other committee chairs, vice-chairs, and Section members who rallied to the call of service this year. This is truly an extraordinary Section composed of considerate and dedicated lawyers and associate members. The truly heavy lifting is done by those unheralded members who provide the substance to our efforts and, ultimately, to the achievements for which the Section is so well known. Thank you for your support and I encourage you to contact your Section officers for appointment to leadership opportunities that present even greater challenges.

Finally, I will recognize the person most responsible for making it possible for me to do the best I could as chair. Alix, my wife and best friend for 37 years, has accepted with understanding and patience being abandoned this year, as I pursued my commitment to the Section and performed my day job as well. She faithfully attended all of the Section meetings, providing help for the spouses and guests and sponsoring activities. I observed to Alix in my “Incoming Chair’s” column that I would be home for dinner in about a year. In fact, I was usually home for dinner. Regardless of the time I drug my sorry body over the threshold Alix had dinner waiting. Some would be critical because she enables my lifestyle, but I can only say I love her all the more for her support.

To the Section membership and its leadership, I say thank-you for the opportunity and the honor to have served as your chair. To your credit the Section is stronger and more vibrant than ever. To Michael Hordell, your chair-elect and the other Section officers, I wish you God-speed in the years ahead.