By Aaron P. Silberman, Chair

Now, perhaps more than ever, politics are intruding into our everyday lives, professional and personal. Politics have always loomed in government contracts law practice, but it used to be a lot easier (or at least seemed to be) to compartmentalize politics and policy on the one hand and law and law practice on the other.

How can (or should) we, as government contract lawyers, separate our practices and professional activities from our political views? If politics are more relevant to government contracting than ever, what should we as a Section do to account for that? We are not a political organization, and our mission depends on our remaining politically neutral, but we also must stay relevant to be useful to our members and the government contracts bar and community.

First, let me be clear about what this column is not. It’s not about politics; it’s about talking about politics. I’ll do my best not to espouse my own political views. I’m well aware of, and generally agree with, the common wisdom that one should avoid discussing politics (and religion) in professional settings. Just how difficult it is to do so is part of my point.

This column also is not about our professional roles when we are asked to advance our clients’ political positions. Government and in-house lawyers may be asked to advance administration policy objectives for their agencies or companies. Lawyers in private practice may be asked to advance their clients’ interests in legislative or regulatory proceedings. (Note: Our keynote speaker at the Section’s Fall Program in Louisville, Kentucky, will discuss the line between lawyer and lobbyist and how not to cross it inadvertently.)

A few illustrations of what I am talking about: On one occasion, the Section officers encountered a dilemma revolving around the invitation of a politician to present the introductory remarks at one of our section’s programs being held in his home state. The politician had recently garnered national headlines for some controversial political remarks and viewpoints, leading the Section officers to a discussion about the possible impact of, and the reaction to, this politician’s participation at our program. By taking politics out of the equation, having this politician address our attendees would be a no-brainer. More pragmatically, would his appearance reflect positively or negatively on the Section?

Would the Section be viewed as endorsing, condoning, or at least seeming to approve, having this politician address our attendees? Would the Section officers encounter a dilemma regarding whether the politician’s participation was appropriate? Would the politician’s appearance reflect positively or negatively on the Section? This is the kind of question that a political consultant might ask, but one that we, as government contract lawyers, might not have been asked to consider.

Continued on page 23
NEWS FROM THE CHAIR
continued from page 2

least not objecting to the politician’s positions? As it turns out, the politician’s schedule precluded him from accepting the invitation, leaving this issue to another day.

Another illustration: In early August this year, the NAACP for the first time issued a travel advisory for a state—Missouri. According to NAACP leaders, the warning about discrimination and racist attacks was issued because of recent legislation making discrimination lawsuits harder to win, longtime racial disparities in law enforcement, and incidents of harm coming to minority residents and visitors. How does this affect the Section? We held our 2017 State & Local Procurement Symposium this past April in St. Louis. What if the timing had been different? Would it have been appropriate for the Section to consider this advisory in choosing whether to hold a program in Missouri? If we chose to do business in that state, would the Section be viewed as endorsing the practices that motivated the advisory? Should we as a Section consider the message it would send to our minority members and attendees if we choose to hold a program in a state subject to such an advisory? Advisories like this one are becoming more common, so, again, these are the kinds of issues we will have to confront at some point.

Also in August, at the ABA Annual Meeting in New York City, I attended a CLE session on whether the Trump administration may threaten or withhold grant funds to sanctuary states and cities based on alleged failure to cooperate with federal immigration enforcement. The legal and constitutional issues are fascinating. I had several casual conversations about them with other Section members at the meeting, and hints of our respective political views inevitably crept in. Two cities at the forefront of pending lawsuits on these issues are Chicago and San Francisco—the sites of our next two ABA Annual Meetings (August 2018 and 2019). How will or should this hot-button political issue influence Section participation and programming at these meetings?

So, what can or should we do about these kinds of political issues? The “old school” approach is that such things should not be discussed. I call this the “Scranton YMCA Approach,” named for the gym that banned both CNN and Fox News from its televisions to avoid political arguments that were interfering with members’ ability to get a good workout. While we do heavy lifting commenting on proposed Federal Acquisition Regulation rules, flex our muscles on False Claims Act case law, and sweat out sequestration, I don’t think the Scranton YMCA Approach is a good fit for our Section. These kinds of issues are not going away. While we are not policymakers, policy runs through much of what we do, and with policy inevitably comes politics. So we can’t just shut off politics or change Section discourse to the equivalent of the Food Network.

Instead, we should do what so many in our country—politicians and the public alike—are not doing. We should have mature, adult conversations about policy and political issues that are affecting our Section, bar, profession, and the clients and procurement systems we serve. We should do so respectfully and professionally, but we cannot simply ignore these issues and hope they go away. And when political issues impose difficult choices on our Section, we must look to our mission and our core values, and, where necessary to advance and protect them, act accordingly.