Chair's Message

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It is said that good things come in threes. One can concoct theories for why people might think this is true—it could reflect Christian trinitarianism, or the existence of three dominant monotheistic religions, or the mystical appeal of the pyramid. But it’s hard to know why it actually would be true. To be sure, some good things come in threes—my three children come to mind (at least, to my mind). Or, to use a less parochial and more Section-relevant example, the three branches of government, which one sees on the Section’s logo. But some not so good things come in threes as well. Blind mice, for example.

Here then, to mark the start of my term, are a good set of threes and a troublesome set—three things that delight me as Section chair and three things that worry me.

What delights me are the fundamental strengths of this Section. There are many, and different members will value different aspects of what the Section offers. But here are three I particularly value:

• The opportunity to learn. I have never come to a Section program, meeting, or even social gathering without learning something. There are so many knowledgeable people in our midst. Importantly, our section boasts a balanced mix of private practitioners, government lawyers, and academics that is rare if not unique among ABA sections. One learns most by crossing paths with people who care about the same things, but have different expertise, background, and perspective.

• The nonpartisanship. Ours is a fractious and divided age, and a fractious and divided profession, in which political disagreements feel ever more corrosive and disheartening. Relatively speaking, however, our section has avoided partisan struggles. I’d like to think this reflects the fact that our members are people of good will, civility, and maturity. That is undoubtedly true, but we also benefit from the nature of the field. The fact that administrative law is not about a particular set of substantive rules—a feature that befuddles many law students—helps us avoid fights over what the substantive rules should be.

• The level of engagement. The Section has historically made, and continues to make, an important contribution to the profession and to the improvement of governance in this country. An awful lot of people devote an awful lot of time to Section projects. Other than our three stellar full-time staff members, they all do it without pay. Why? Of course there are important indirect professional benefits. But the main reason is that they realize that this is a meaningful form of service.

So, with those strengths, what could there be to worry about? Well, at least these three challenges, which are interrelated and to a large extent correspond to the strengths:

• Providing value for members in the world of the Internet. Much of the value that this and other sections have historically provided their members has been in the form of professionally useful information, conveyed in publications (like this one) but also through casual in-person conversations. In the era of agency websites, open government, blogs, listservs, on-line access to law reviews, and so on, much of what was available to members—only by virtue of their membership, through publications and even conversations—is now available to everyone on the Internet. To stay relevant and useful, our section and the ABA as a whole must focus on exactly how we can effectively serve our members.

• Declining membership. In recent years, our section has undergone a disconcerting contraction. It has done so, I hasten to add, right along with the ABA itself. This is not a section-specific challenge. But increasing membership is vital to the section’s vibrancy, relevance, and success. I am delighted that immediate past chair Jon Rusch will bring his considerable skills and dedication to the position of chair of our Membership Committee this year.

• Elusive consensus. I know, I know, I just said we are nonpartisan. And we are. But there have been a few cracks. A partisan divide characterizes and to some extent paralyzes debate outside the section over, say, the REINS Act or proposals to make rulemaking more formal. This reflects an awareness on both sides of the substantive consequences of what are on their face policy-neutral, procedural proposals. Such disagreement can be avoided by fleeing to the highest level of meaningless abstraction. (ABA resolutions often reflect this tactic.) I would rather that we avoid it through serious, open-minded discussion. Whether one thinks agencies should do a lot or a little, we can all agree that whatever they do they should do well. And we can substantially agree on what that means.

That list of strengths and concerns is, of course, incomplete. But however long you make either list, the strengths hugely outweigh the concerns. I begin my year as chair of the Section with tremendous optimism for what we can achieve. I look forward to working with the section leadership and all interested members to advance our field and our profession, to bring value to our members, and to improve the functioning of our government. That sounds grandiose, but it is exactly what the Section has always done, and it is what the Section will continue to do on my watch.