

TRB

PRELIMINARY PROGRAM

50th Annual Workshop on Transportation Law

Hyatt at Olive Eight
Seattle, WA

Sunday, July 17 – Wednesday, July 20, 2011



TRANSPORTATION RESEARCH BOARD
OF THE NATIONAL ACADEMIES

Announcing the 50th Anniversary of the TRB Workshop on Transportation Law

The Legal Resources Group of the Transportation Research Board is pleased to announce the 50th Annual Workshop on Transportation Law. This annual workshop is unique in bringing together lawyers representing federal, state, and local agencies and the private sector who work in all areas of transportation law. The Workshops aim to keep practitioners current on important areas of the law, while reflecting the growth and evolution of America's transportation system.

We have invited high level dignitaries from the United States Department of Transportation and the Honorable Alan Boyd, the first Secretary of the United States Department of Transportation, to join in the celebration of our 50th Workshop. We are also planning a special program to reflect on the continuing importance of one of the most influential transportation cases ever to come before the United States Supreme Court, *Citizens to Preserve Overton Park v. Volpe*. The program will include Secretary Boyd, John Vardiman who argued the case before the Supreme Court, and Charles Newman, who represented the plaintiffs throughout the lengthy course of the litigation. For many years Overton Park was the most-cited United States Supreme Court decision, primarily because of its significance for Federal administrative law. The case remains one of the seminal environmental law decisions.

Other sessions of the program will also reflect on the special focus of this Workshop. There will be an evening event at one of the monuments to transportation, the Space Needle, which was the focus of the 1962 Seattle World's Fair.

Please join us in Seattle for what promises to be a very special time for anyone having an interest in transportation law.

50th Annual Workshop on Transportation Law

SPONSORED BY

Legal Resources Group Technical Activities Division Transportation Research Board

*Legal Resources Group Chair, Edward V.A. Kussy
Legal Resources Group Secretary and TRB Representative, James B. McDaniel
Committee on Transportation Law, Chair, Alla C. Shaw
Committee on Transit & Intermodal Transportation Law, Chair, Bruce M. Smith
Committee on Contract Law, Chair, Edward S. Harris
Committee on Emerging Technology Law, Chair, Katie K. Kelly
Committee on Environmental Issues in Transportation Law, Chair, Margaret N. Strand
Committee on Eminent Domain & Land Use, Chair, Jimmy Isonhood
Committee on Tort Liability & Risk Management, Chair, Robert J. Shea*

Transportation Research Board Staff

Mark Norman, Director, Technical Activities
James B. McDaniel, Counsel for Legal Research Projects
Joanice L. Cole, Senior Program Assistant
Stacy Pepitone, Meeting Coordinator

The workshop has in the past been approved for continuing legal education (CLE) credits in states requiring such credits. Rules vary from state to state, so participants needing credit should obtain necessary forms for individual applications. Inquiries about such matters should be made to James B. McDaniel, TRB Counsel for Legal Research Projects at 202-334-3209.

The registration fee covers all sessions of the workshop program and papers distributed at or following the workshop, plus the Sunday, evening reception (July 17), Tuesday evening social event (July 19), Monday through Wednesday continental breakfasts, and morning and afternoon coffee breaks. Spouses/guests and families of attendees are invited to enjoy continental breakfast in the TRB Hospitality Room Monday and Tuesday. Additional tickets for the Tuesday social event may be purchased for \$90.00 each on-site; subject to availability.

TRANSPORTATION RESEARCH BOARD OF THE NATIONAL ACADEMIES

The **Transportation Research Board** is one of six major divisions of the National Research Council, which serves as an independent adviser to the federal government and others on scientific and technical questions of national importance. The National Research Council is jointly administered by the National Academy of Sciences, the National Academy of Engineering and the Institute of Medicine. The mission of the Transportation Research Board is to provide leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal. The Board's varied activities annually engage about 7,000 engineers, scientists, and other transportation researchers and practitioners from the public and private sectors and academia, all of whom contribute their expertise in the public interest. The program is supported by state transportation departments, federal agencies including the component administrations of the U.S. Department of Transportation, and other organizations and individuals interested in the development of transportation.

www.TRB.org

PROGRAM AT A GLANCE

SUNDAY JULY 17, 2011	
3:00 pm - 6:00 pm	Registration
	Reception
MONDAY, JULY 18, 2011	
7:30 am – 5:00 pm	Registration
7:30 am – 8:00 am	Continental Breakfast
8:00 am – 8:30 pm	Welcome
8:30 am – 9:45 am	50 Years of TRB Workshops
9:45 am – 10:30 am	Chief Counsels
10:30 am – 10:45 am	Break
10:45 am – 12:15 pm	Session 3: Megaprojects: Legal Issues, Challenges and Lessons Learned
12:15 pm – 1:30 pm	Lunch on Your Own
1:30 pm - 3:00 pm	Session 4: New NEPA Guidance and Other Hot Items Session 5: Transit Lawyer Update
3:00 pm – 3:15 pm	Break
3:15 pm – 4:45 pm	Session 6: Livability and the Law: Environmental Justice in Transportation Planning Session 7: Employment Law Update: Fitness For Duty and ADA Developments
TUESDAY, JULY 19, 2011	
7:30 am – 3:00 pm	Registration
7:30 am – 8:00 am	Continental Breakfast
8:00 am – 9:30 am	Session 8: Engineering & Tort Law: A Historical Perspective of the Past 50 Years Session 9: Rail Session—Keeping on Track as to High Speed Rail, Positive Train Control, and Liability/Indemnification Issues
9:30 am – 9:45 am	Break
9:45 am – 11:30 am	Session 10: New Developments In Project Delivery: Where We Are And Where We Are Going? Session 11: Fitness For Duty And Civil Rights Issues In Transit
11:30 am – 12:30 pm	Lunch on Your Own

	Tort Liability & Risk Management Committee Contract Law Committee
12:30 pm – 2:00 pm	Transit and Intermodal Transportation Law Committee Environmental Issue in Transportation Law Committee
2:00 pm - 2:30 pm	Break
	Eminent Domain and Land Use Committee
2:30 pm – 4:00 pm	Transportation Law Committee Emerging Technology Law Committee
6:30 pm – 9:30 pm	Dinner
WEDNESDAY, JULY 20, 2011	
7:00 am – 7:45 am	Continental Breakfast
7:45 am – 9:15 am	Session 12: Superfund Rises Again: Commencement Bay Litigation and State Superfund Liability for Storm Water Discharges Session 13: Current Transportation Issues In Indian Country
9:15 am – 9:30 am	Break
9:30 am – 11:00 am	Session 14: Ethics Session
Noon – 3:00 pm	Group Council Meeting



Mobile Phone Manners

As a courtesy to other attendees, please observe good mobile phone manners. When attending meetings and in the public areas adjacent to these activities, please turn off your cell phones and other wireless communication devices or use the silent notification options. Thank you for your cooperation

~ PROGRAM ~

SUNDAY, JULY 17, 2011

3:30 p.m. – 6:00 p.m. **REGISTRATION**
RECEPTION

MONDAY, JULY 18, 2011

7:30 a.m. – 5:00 p.m. **REGISTRATION**

7:30 a.m. – 8:00 a.m. **CONTINENTAL BREAKFAST**

8:00 a.m. – 8:30 a.m. **WELCOME**

- Edward V.A. Kussy, Chair, Legal Resources Executive Board,
- Robert S. Skinner, Executive Director, Transportation Research Board
- Mark R. Norman, Director, Technical Activities Division, Transportation Research Board

8:30 a.m. – 9:45 a.m. **50 YEARS OF TRB WORKSHOPS—THE LEGACY OF
CITIZENS TO PRESERVE OVERTON PARK v. VOLPE**
Edward V. A. Kussy, Nossaman, LLP, *presiding*

In celebration of 50 years of TRB Annual Legal Workshops, this session features two attorneys directly involved in the landmark Citizens To Preserve Overton Park v. Volpe decision. John Vardaman argued the case before the U.S. Supreme Court. For many years, Overton Park was the most-cited U.S. Supreme Court decision, primarily on administrative law, and the lawsuit remains one of the seminal environmental law decisions.

Short Video Introduction from Memphis Memoirs

Bruce Smith, Apperson Crump PLC

Panel Discussion

John Vardaman, Esq., William and Connolly; and Alan S. Boyd, Former and First Secretary of the U.S. Department of Transportation

9:45 a.m. – 10:30 a.m. **CHIEF COUNSELS**

- Dorval Carter, Federal Transit Administration (FTA)
- Fred R. Wagner, Federal Highway Administration (FHWA)

10:30 a.m. – 10:45 a.m. **BREAK**

10:45 a.m. – 12:15 p.m. **SESSION 3: MEGAPROJECTS: LEGAL ISSUES, CHALLENGES AND LESSONS LEARNED**
Edward S. Harris, Maryland State Highway Administration; and Kurt Dettman, Constructive Disputes Resolution *presiding*
Sponsored by Contract Law Committee

Hoover Dam By Pass

David Sett, Federal Highway Administration (FHWA)

Alaskan Way Viaduct

Linea Laird, Washington State Department of Transportation; and Daniel Galvin, Washington State Office of Attorney General

Sound Transit Light Rail

TBD

12:15 p.m. – 1:30 p.m. **LUNCH ON YOUR OWN**

~ 1:30 p.m. – 3:00 p.m. ~

SESSION 4: NEW NEPA GUIDANCE AND OTHER HOT ITEMS

SESSION 5 : TRANSIT LAWYER UPDATE

William G. Malley, Perkins Coie LLP, *presiding*
Sponsored by Environmental Issues in Transportation Law Committee

Bruce M. Smith, Apperson Crump PLC, *presiding*
Sponsored by: Transit and Intermodal Transportation Law Committee

Panel Discussion

Ellen Athas, Council on Environmental Quality (invited); Deborah Cade, Washington Attorney General's Office; Richard Christopher, HDR Engineering; and Janet Myers, Federal Highway Administration

Conducting a Best Value Evaluation in a Public Private Partnership RFP

Diana S. Parks, Nossaman LLP

Reauthorization of the Federal Transit Programs: The Administration's Proposals

Rita M. Maristch, Federal Transit Administration

Buy America and Other Policy Initiatives

Jayne Blakesley, Federal Transit Administration

3:00 p.m. – 3:15 p.m. **BREAK**

~ 3:15 p.m. – 4:45 p.m. ~

**SESSION 6: LIVABILITY AND THE LAW:
ENVIRONMENTAL JUSTICE IN
TRANSPORTATION PLANNING**

Atinuke Diver, Research and Innovative
Technology Administration, *presiding*
*Sponsored by Emerging Technology Law Committee,
and Environmental Issues in Transportation Law
Committee*

What is Title VI and Why Does it Matter?

Jodi Petersen, Federal Highway Administration
(FHWA)

**Interaction between Title VI, Livability, and
Transportation Planning**

Charles Howard, Pugut Sound, MPO

**At the Crossroad: How Current Legal Issues
Intersect with the Implementation of Livability and
Sustainability Initiatives**

**SESSION 7: EMPLOYMENT LAW UPDATE:
FITNESS FOR DUTY AND ADA
DEVELOPMENTS**

Tamar Graham Scott, Oklahoma Department of
Transportation, *presiding*
*Sponsored by Transit and Intermodal Transportation Law
Committee and Transportation Law Committee*

**Recent Developments: Americans With Disabilities
Act**

Carolyn Ladd, The Boeing Company; and Merisa
Heu- Weller, Davis Wright Tremaine LLP

The EEOC's Perspective

EEOC Representative

TUESDAY, JULY 19, 2011

7:30 a.m. – 3:00 p.m. **REGISTRATION**

7:30 a.m. – 8:00 a.m. **CONTINENTAL BREAKFAST**

~ 8:00 a.m. – 9:30 a.m. ~

**SESSION 8: ENGINEERING & TORT LAW:
A HISTORICAL PERSPECTIVE OF THE
PAST 50 YEARS**

Robert J. Shea, Pennsylvania Department of
Transportation, *presiding*
*Sponsored by Tort Liability and Risk Management
Committee*

Panel Discussion:

John M. Mason, Jr., Auburn University; Michael E.
Tardif, Freimund, Jackson & Tardif, LLP; and
Christopher Brehmer, Kittelson & Associates, Inc.

**SESSION 9: RAIL SESSION—KEEPING ON
TRACK AS TO HIGH SPEED RAIL, POSITIVE
TRAIN CONTROL, AND
LIABILITY/INDEMNIFICATION ISSUES**

Edward J. Fishman, KL Gates, *presiding*
*Sponsored by Transit and Intermodal Transportation Law
Committee*

Panel Discussion

Edward J. Fishman, KL Gates

Positive Train Control

Jason Schlosberg, Federal Railroad Administration

Liability and Indemnification Issues

Tamara Lesh, Tri-Met

9:30 a.m. – 9:45 a.m. **BREAK**

~ 9:45 a.m. – 11:15 a.m. ~

**SESSION 10: NEW DEVELOPMENTS IN
PROJECT DELIVERY: WHERE WE ARE
AND WHERE WE ARE GOING?**

Eric Kerness, Kerness Consulting *presiding*
Sponsored by Contract Law Committee

CM at Risk: Miami Intermodal Center

Pamela Leslie, Miami Dade Expressway Auth

**Delivering CM at Risk Highway Projects - Utah
DOT**

James McMinimee of Applied Research Associates

SEP 14: Role of FHWA

Mike Harkins, U.S. Department of Transportation

Development in Integrated Project Delivery

Kurt Dettman, Constructive Disputes Resolution

**SESSION 11: FITNESS FOR DUTY AND CIVIL
RIGHTS ISSUES IN TRANSIT**

Bonnie Graves, Federal Transit Administration
(FTA), *presiding*
*Sponsored by Transit and Intermodal Transportation
Law Committee*

Fitness for Duty

Jocelyn Waite, Esq. Jocelyn Waite and Associates
Author of TCRP Legal Research Digest # 34, Application of Physical
Ability Testing to Current Workforce of Transit Employees

American with Disabilities Update Services

Richard Wong, Federal Transit Administration

DBE Issues

Colette Holt, Esq. Colette Holt and Associates
Co-author of NCHRP Report # 644, Guidelines for Conducting a
Disparity Study for the Federal DBE Program

11:30 a.m. – 12:30 p.m. **LUNCH ON YOUR OWN**

~ 12:30 p.m. – 2:00 p.m. ~

TORT LIABILITY & RISK MANAGEMENT COMMITTEE

CONTRACT LAW COMMITTEE

TRANSIT AND INTERMODAL TRANSPORTATION LAW COMMITTEE

ENVIRONMENTAL ISSUE IN TRANSPORTATION LAW COMMITTEE

2:00 p.m. - 2:30 p.m. **BREAK**

~ 2:30 p.m. – 4:00 p.m. ~

EMINENT DOMAIN AND LAND USE COMMITTEE

TRANSPORTATION LAW COMMITTEE

EMERGING TECHNOLOGY LAW COMMITTEE

6:30 p.m. – 9:30 p.m. **DINNER**
The Seattle Space Needle

WEDNESDAY, JULY 20, 2011

7:00 a.m. – 7:45 a.m. **CONTINENTAL BREAKFAST**

~ 7:45 a.m. – 9:15 a.m. ~

**SESSION 12: SUPERFUND RISES AGAIN:
COMMENCEMENT BAY LITIGATION
AND STATE SUPERFUND LIABILITY FOR
STORM WATER DISCHARGES**

Margaret “Peggy” Strand, Venable LLP,
presiding
*Sponsored by Environmental Issues in Transportation
Law Committee*

Panel Discussion:

Deborah Cade, Washington State Office of the
Attorney General; Denise Ferguson, Maryland
Attorney General's Office; and George Mannina,
Nossaman, LLP

**SESSION 13: CURRENT TRANSPORTATION
ISSUES IN INDIAN COUNTRY**

Vivian Philbin, Federal Highway Administration
(FHWA), *presiding*
*Sponsored by Transportation Law Committee, and
Eminent Domain and Land Use Committee*

**Building Successful Tribal-State-Federal
Transportation Partnerships**

Matthew S. Jaffee, Sonosky, Chambers, Sachse,
Endreson & Perry, LLP

Right-of-Way Issues in Indian Country

Ronald C. Hall, Tribal Technical Assistance Program

**State and Tribal Consultation under the Washington
Centennial Accord, the National Historic Preservation
Act and NEPA**

Steve Reinmuth, Washington State Department of
Transportation

**The Indian Self-Determination Act: How Tribes
Contract for Federal Transportation Funds**

Steve D. Osborne, Hobbs Straus Dean & Walker, LLP

9:15 a.m. – 9:30 a.m. **BREAK**

9:30 a.m. – 11:00 a.m. **SESSION 14: ETHICS SESSION**
Edward V.A. Kussy, Nossaman, LLP, *presiding*
Sponsored by Legal Resources Group (AL000)

Subjects That Should Be Addressed In Your Agency’s Code of Conduct. Many public sector entities are required by law, regulation or policy to adopt and enforce a Code Of Conduct or Code Of Ethics. This presentation addresses the subjects that must and should be included in a Code Of Conduct, and the agency attorneys’ ethics and professional responsibility as to the Code of Conduct.

Social Media Policies—The Attorney’s Professional Obligations. The widespread use of social media requires that an agency develop an effective social media policy. Sample core provisions of a Social Media Policy will be adopted. The professional obligation of the transportation lawyer in dealing with maintaining attorney client privilege and attorney work product, conflicts of interest arising from utilization of social media, public records and open meetings act issues, and claims of personal privacy will be discussed.

Panel Discussion

Scott A. Biehl, Federal Transit Administration; and Bruce M. Smith, Apperson Crump PLC

11:00 a.m. – 11:15 a.m. **CLOSING REMARKS & ADJOURNMENT**

Noon – 3:00 p.m. **GROUP COUNCIL MEETING**