

# TRB's ANNUAL TRANSPORTATION LAW WORKSHOP

## 25th Year Celebrated in Williamsburg, Virginia

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*The 25th Annual Workshop on Transportation Law was held last July in Williamsburg, Virginia; 92 registrants from 35 states, the federal government, and the Commonwealth of Puerto Rico participated. On the occasion of the 25th anniversary of the workshop, some looking back at the past legal activities of the Transportation Research Board appears to be in order.*

### History of TRB Legal Activities

Only two of those in attendance at the 25th Law Workshop, Ross D. Netherton and Robert W. Cunliffe, were at the very first workshop at the University of Wisconsin in July 1962. At that time, Netherton was Counsel for Legal Research for the then Highway Research Board.

*Robert W. Cunliffe is Counsel for Legal Research, TRB.*



Speakers and panel members at TRB's 25th Annual Workshop on Transportation Law (clockwise from top): Walter McFarlane, Deputy Attorney General, Virginia, presiding at the opening session of the workshop; Robert Reilly, CRP Division Director, TRB, describes TRB programs; Richard Jacobsen, Chief Solicitor for Litigation of the City of Baltimore, discusses the issue of recovery of bridge reconstruction costs from railroads; Larry Thelen, Caltrans, addresses the topic of airport noise; Richard Bower, Caltrans, and Bruce Doman debate the issue of requiring competitive bidding in the A/E selection procedure.



*Clockwise from top:* 92 registrants from 35 states, Puerto Rico, and the federal government participated in the various sessions of the law workshop held last July in Williamsburg, Virginia; Victor Perini, Jr., General Counsel, Highway Users Federation for Safety and Mobility, moderates a panel discussion on truck safety; Cordell Parvin, Parvin and Wilson, Roanoke, Virginia, addresses highway construction claims from the contractor's perspective; relaxing between workshop sessions are (from left) Bruce Doman, Ross Netherton, the first Counsel for Legal Research, HRB, Larry Thomas, former Counsel for Legal Research, TRB, and Irwin Shroeder, Regional Counsel—Albany, FHWA; Watson Arnold, Special Assistant Attorney General of Texas, welcomes workshop attendees on behalf of TRB's Group 4 Legal Resources Council.

Although the Transportation Law Workshop is the oldest continuous one at TRB, the Legal Resources Group is a more recent group. Before the early 1950s, the lawyers active in the Board were members of the Committee on Land Acquisition and Control of Highway Access and Adjacent Areas. The membership of that committee was comprised of both lawyers and right-of-way agents. Beginning in 1946, the committee published a number of *Highway Research Correlation Service Circulars*, which reported on cases involving highway law.

Not until 1951, when the Executive Committee of the American Association of State Highway Officials asked the Highway Research Board to sponsor a study of state highway laws leading to revision of the laws for the purpose of uniformity, was thought given to forming a legal group. At the Annual Business Meeting of HRB in 1951, the chairman of the Department of Economics, Finance, and Administration reported that "HRB has been approached by AASHO to undertake research looking toward a revision of state highway laws." At the same meeting, Louis R. Morony of the Automotive Safety Foundation reported on a study conducted by his organization on the highway laws of North Dakota that pointed out the need for revision.

The 1954 Highway Research Board Annual Report lists the first legal committee established—Highway Laws—with Louis R. Morony as chairman and David R. Levin as secretary. At the Board's Annual Business Meeting, it was reported that the first two subjects to be studied by the committee and staff were to be: (a) constitutional provisions affecting highways, and (b) highway-system classification. It was also announced that a study had been undertaken on a third subject: declaration of legislative policy relating to highways. The chairman advised those in attendance that this subject was important because "it provides tonicity and perspective to state highway laws in general, providing the judiciary with a proper setting for the interpretation of highway statutes in the public interest."

The Highway Laws Committee also began a systematic interchange of information on legal matters of current interest through the Highway Research Correlation Service. From 1953 to 1962 the committee issued 45 legal reports. Circular 337 of the HRCS, dated May 1957, contains a "Progress Report on Highway Laws Study" by Chairman Morony, reporting that HRB now had a staff including five lawyers and three clerks. He also advised that 50 percent of the states had contributed their statutes or codes and that resources were available to buy the law books required by the staff to carry out their work.

The minutes of the 1962 Business Meeting of HRB contains a statement that Ross D. Netherton had been appointed to the position of HRB Counsel for Legal Research. A report given by J. H. (Jake) Beuscher, Chairman of the Special Committee on Highway Law, who was a professor of law at the University of Wisconsin at the time, contained the following recommendation:

Finally, in accordance with the committee's program and also pursuant to sentiment expressed by the AASHO Committee on Legal Affairs, the committee recommended that HRB, acting alone or jointly with other appropriate parties, sponsor a workshop for state highway counsels during 1962. This workshop would be for the purpose of exploring ways for greater utilization of HRB highway laws studies and other recent legal research in current operating problems of highway counsels.

The first Annual Highway Law Workshop was held pursuant to this report in July 1962, and has been conducted every July since then.

In June 1963 the HRB Executive Committee authorized establishment of a Department of Legal Studies as a permanent part of the Board's organization. A subsequent reorganization of the Board resulted in a change of designation to Group 4—Legal Resources.

The foregoing discussion illuminates two examples of how the Board effectively responds to and serves the transportation community: the establishment

of a law committee by HRB, and sponsorship of the Law Workshop for the past 25 years.

## 25th Annual Transportation Law Workshop

### Welcoming Remarks and Introductions

Presiding at the opening session of the 25th Law Workshop this past July was Walter A. McFarlane, Deputy Attorney General of the Commonwealth of Virginia. Vivian E. Watts, Secretary of Transportation and Public Safety, welcomed the group to Virginia, urging the attorneys present to involve more non-lawyers in deliberations at future workshops and, in carrying out their duties, to work closely with state agency personnel in order to best serve the public interest.

Watts's point about involving nonlawyers in the TRB Transportation Law Workshops was well taken and one that has always been encouraged. At the first workshop, four engineers were in attendance, including Ralph R. Bartelsmeyer, then Chief Highway Engineer, Illinois Division of Highways, and Chairman of the HRB Executive Committee. Seven nonattorneys were present at the 1986 workshop. Engineers and administrators have always been welcome and encouraged to attend all of the workshops.

Robert J. Reilly, Director of TRB's Cooperative Research Program Division, welcomed the group on behalf of Executive Director Thomas B. Deen. Reilly described the activities of all four divisions of TRB, particularly stressing the research value of the Transportation Research Information Services and the studies conducted by the Cooperative Research Program, and explaining the process for getting research topics into the program. He pointed to the value of the tort synthesis (*NCHRP Synthesis of Highway Practice 106: Practical Guidelines for Minimizing Tort Liability*) to administrators and engineers. Reilly also stressed the value of NCHRP Special Project 20-6, which has pub-

lished legal Research Results Digests and the four-volume treatise on *Selected Studies in Highway Law* as aids to the legal practitioner.

Welcoming workshop attendees on behalf of the Group 4 Council was Watson C. Arnold, Special Assistant Attorney General of Texas and Chairman of Group 4—Legal Resources. Arnold introduced Ross D. Netherton, TRB's first Counsel for Legal Research, who organized the first workshop in 1962 with the assistance of Saul C. Corwin, Clifton W. Enfield, David R. Levin, Mason Mahin, Louis R. Morony, Robert L. Hyder, Leonard I. Lindas, Robert E. Reed, and John R. Rezzolla.

### Panel of Chief Counsels to the U.S. DOT Modal Administrations

Jim J. Marquez, General Counsel of the United States Department of Transportation, led a panel of his chief counsels to the various administrations in reporting on recent developments in transportation law. Discussing the relationship between his office and that of the chief counsels to the modal administrations, Marquez advised that as a general rule the Offices of Chief Counsel are responsible for litigation and advisory opinions in their respective administrations. However, if a matter affects, or could affect, the national interest, the General Counsel's Office gets involved. Marquez expressed hope that the Conrail matter would be resolved before the end of this legislative session. He also noted the fast and dynamic changes in aviation as a result of deregulation, stating that the large number of mergers currently taking place is keeping his office busy.

Anthony J. McMahon, Chief Counsel, the FHWA, covered some of the highway issues he had been involved in since the last workshop. McMahon first noted that the amount of money collected as gasoline and excise taxes for the Trust Fund is sizable and that large amounts of money attract people who need money. The people McMahon was referring to were not the often-mentioned special interest groups trying to get funds for their own projects, but

criminals and organized crime. It is estimated that \$500 million in federal gasoline tax monies is lost each year, and that the excise tax loss is close to \$1 billion. McMahon noted that there have been prosecutions by the IRS and the Organized Crime Group in the U.S. Department of Justice. Although there are under-reporters in every state, the biggest losses are occurring in 12 to 14 states. One solution being considered is to move tax collection up the distribution chain to the refinery level. (The Tax Reform Act of 1986 includes a provision that changes the point of collection of the federal gasoline tax to the point at which the gasoline is removed from the refinery or manufacturing plant.)

McMahon addressed the issue of the 55 mph speed limit (an issue currently in Congress at the time of this writing). Although the speed limit was originally instituted as a conservation measure, its success over the years in reducing accidents and fatalities has made it a safety measure. The 21-year drinking age issue was next on McMahon's agenda. He mentioned the states that were not in compliance and faced loss of federal funds.

Gregory B. McBride, Assistant Chief Counsel for Safety, substituted as a panel speaker for Chief Counsel John M. Mason, Federal Railroad Administration. He reported that the major safety problem involving railroads is the use of alcohol and drugs on the job. A recent survey reported that 5 percent of employees arrive at work under the influence. In an effort to curb such abuses and enhance safety, a rule was promulgated in 1985, with the following provisions: (a) no possession, use, or working under the influence, (b) railroads must inquire into alcohol or drug use in the investigation of all accidents, (c) urine samples are required in accidents, and (d) mandatory preemployment screening as to the use of drugs and abuse of alcohol.

As of July 1986, the rule was being tested in the courts by the railroad unions. The district court had granted summary judgment for the government. The union appealed to the circuit court, which granted a stay pending its

disposition of the matter. The government then appealed the stay order to the United States Supreme Court, which vacated. Thus the rule is now in effect.

McBride pointed out that states are becoming increasingly involved in railroad safety issues. The FRA has no objection to this activity on the part of the states, as long as a rule that preempts state action is not enacted by the FRA.

The last speaker on the General Counsels panel was E. Tazewell Ellett, Chief Counsel, Federal Aviation Administration. Recognizing that not all state transportation lawyers deal in airport or other aviation problems on a regular basis, Ellett offered the help of his office to any state having difficulty with an unfamiliar aviation problem.

Airport noise continues to be a problem around the country, Ellett said. O'Hare Airport in Chicago was the subject of litigation involving its new airport layout plan for expansion. The Seventh Circuit Court of Appeals ruled that the FAA acted properly on the environmental impact statement in approving the plan. The court pointed out that the complaining surrounding political subdivisions had failed to treat the problem by the use of zoning and land-use control.

Addressing aviation tort law, Ellett remarked that the federal government is usually a defendant in every aviation accident case because it certifies aircraft, pilots, and airports. He advised, however, that the regulatory role of the FAA is cloaked with discretionary immunity and that the certification program is also covered by the discretionary function exception.

#### **Transportation Law Topics Addressed in Formal Papers and Presentations**

Michael J. McCaney, a former assistant counsel with Pennsylvania Department of Transportation, presently in private practice in Philadelphia, delivered a formal paper entitled "Conflicts Arising Between State Agencies and Interstate Compact Agencies." While a member of PennDOT's legal staff, McCaney had been assigned to defend the common-

wealth in a number of suits filed almost simultaneously by the Delaware River Port Authority against the commonwealth for failure to construct a highway to connect the Pennsylvania side of the Betsy Ross Bridge between New Jersey and Pennsylvania.

The Delaware River Port Authority was created when Pennsylvania and New Jersey each passed enabling laws and their compact was subsequently ratified by the Congress in 1932. In the 1950s and 1960s the authority tried to obtain a commitment from each Secretary of Highways to build the connection. No outright commitment was ever received, but the authority decided to issue bonds and forge ahead without a commitment from the commonwealth. After construction was completed, the authority filed suit in mandamus to compel construction. As McCaney pointed out, mandamus would lie only where the duty to construct was ministerial and not discretionary. The issue then is whether a contract exists between the commonwealth and the authority. The Pennsylvania Supreme Court has held in answer to a preliminary motion that if such a contract exists, discretion has been exhausted by making contractual commitments. In such a case mandamus will lie. The Supreme Court remanded the matter to the trial court to determine if a contract does exist.

As McCaney admonishes: "It is clear from the decision of the Pennsylvania Supreme Court that once an Interstate agency is created by an Interstate compact, which is federal law, the interest of the states creating the agency becomes subservient to the terms of the company itself."

"Federal Preemption Generally: Its Impact on State Aviation Programs" was the subject of a presentation by John M. McCarthy, Senior Assistant Attorney General, Virginia. McCarthy asked the question: "Are states legitimately in the field of safety in air space?" (directly above the airport and the glide space to it). McCarthy opined that the federal government has totally preempted the area of airspace safety regulation. States, however, do have the right to prosecute

pilots for flying under the influence and in reckless flying cases. A Virginia statute allows the state to prosecute in these cases, McCarthy said.

John J. Beall, Jr., Senior Assistant Attorney General who heads up the Highway Legal Office under McFarlane in Virginia, delivered a formal paper on "Recent Developments in EEOC Litigation—Defense of Personnel Actions." He reported on five U.S. Supreme Court opinions handed down in 1986: *City of Riverside, Ca. v. Santos Rivera*, 54 L.W. 4845 (attorneys fees); *Meritor Savings Bank, FSB v. Vinson*, L.W. 4703 (sex discrimination); *Local 28 of the Sheet Metal Workers v. EEOC*, 54 L.W. 4984 (Affirmative Action Plans, race); *Local No. 93, International Association of Firefighters v. City of Cleveland*, 54 L.W. 5005 (Affirmative Action Plans, race); and *Wygant v. Jackson Board of Education*, 54 L.W. 4479 (Affirmative Action Plans, race).

Bruce K. Doman, Inspector General for Pennsylvania's executive branch administrative agencies, addressed the workshop group on the "Use of Computers in Antitrust and Bid-Rigging Matters." He explained that computers "have allowed us to look at the forest in bidding matters rather than focusing on the trees." BAMS (Bid Analysis Management System) was first used in Kansas in 1983 to analyze bids and in Pennsylvania in 1985. AASHTO bought the system and it is now used in 12 states. The FHWA uses HCDS (Highway Collusion Detection System) and plans to make it available to the states. According to Doman, the system is user-friendly and an excellent management tool.

"Airport Noise: Liability of Airport Operators for Inverse Tort" was the topic covered by Larry Thelen of California Department of Transportation. He pointed out that the California Supreme Court, in the case of *Baker v. Glendale Pasadena Airport*, gave homeowners near airports a license to bring noise actions against airport operators. The Los Angeles Airport alone has \$40 million in claims pending. In Thelen's opinion, each homeowner will probably receive 20 to 30 percent of the fair market value of their homes.

The issue of "Recovery of Bridge Reconstruction Costs from Railroads Under the Common Law" was discussed by Richard (Ken) Jacobsen, Chief Solicitor for Litigation of the City of Baltimore. Making an interesting point, Jacobsen stated that because he thought it would be most helpful to have his engineer in the deposition room during the course of depositions (usually only parties and not witnesses, particularly expert witnesses, are allowed to be there unless they are being deposed), he contacted the opposing attorney, who raised no objection to this procedure. Remarking that the help he received from his engineer was invaluable, Jacobsen stressed the point that one should persist when the rules do not permit certain procedures.

#### Panel Discusses Expert Witnesses

John Beall, Jr., moderated a panel discussion on "Preparation of Expert Witnesses in Transportation-Related Cases." The first panelist was James F. Hayes, a Virginia assistant attorney general who addressed the preparation of an expert witness from the highway construction perspective. He pointed out that the expert must go beyond just expressing an opinion and must make a concerted effort to convince the trier of fact to rely on his expert opinion. To be successful, jargon must be eliminated and the language of the trier of fact must be used. Hayes suggested that the expert witness, while on the stand, assume the role of a teacher. He advised engineering expert witnesses in contract claims cases to dress conservatively. Recommending that witnesses use as much demonstrative evidence as possible, Hayes stated that the "show and tell" retainage rate is about 65 percent, whereas verbal retainage by the average juror may be as low as 10 percent after 72 hours.

Presenting the eminent domain perspective of preparing the expert witness for trial was Francis A. Cherry, Jr., of the law firm of Randolph, Boyd, Cherry & Vaughan in Richmond, Virginia. Cherry noted that in an eminent domain case, the expert valuation witness

testifies to the ultimate fact, the damages, which is not the situation in a typical civil case. In addition, unlike the expert witnesses and in civil cases (for example, engineers, physicians, and accountants), the appraiser expert generally is not educated in his field at the college level. Awareness of the factors is the key to preparing an expert, according to Cherry.

The tort perspective was presented by Joe S. Frank of the law firm of Frank, Pointsett, Nachman and Frank in Newport News, Virginia. "Proper preparation of the expert witness also involves preparation of the attorney who will examine him. The trial is not the time to discover the strengths and weaknesses of a witness's qualifications, the basis for his opinion, the fact that he is not familiar with some treatise, or anything else that is relevant to his opinion or that will affect the weight that the jury will accord to his opinion," Frank stated.

Cordell M. Parvin of the law firm of Parvin and Wilson in Roanoke, Virginia, well known to many of the highway contract claims lawyers in attendance because he has represented highway contractors in claims matters in a number of states, spoke on "Highway Construction Claims: The Contractor's Perspective." Parvin was not complimentary to state construction specifications and the ways in which states deal with contractors.

The theme of Parvin's address was: "Is the taxpayer best served by an unfair contract?" He pointed out that various contractor associations are attempting to correct what they believe to be unfairness in state specifications by inserting various contract requirements in a bill pending in Congress, including a requirement that all federal-aid construction contracts contain a differing site condition clause, a changed condition clause, a delay clause, and a disputes clause.

According to Parvin, the major problem faced by the contractor in regard to contract clauses is the utilities clause concerning delays caused by utility relocations. Pointing out that contractors cannot afford to take this risk, he recommended holding the utilities respon-

The 26th Annual Workshop on Transportation Law will be held July 19-23, 1987, in Portland, Oregon. Engineers and administrators are welcome to attend and join their legal colleagues; their attendance is sincerely urged.

sible to the state and the contractor for delays they cause because "they are the ones who set the dates and make the promises" concerning relocation.

### Competitive Bidding Debated

Richard W. Bower, an attorney with the California Department of Transportation, and Bruce Doman debated the issue "Should Competitive Bidding be Required in the A/E Selection Procedure?" with Bower taking the negative position and Doman the positive position.

Presenting a formal paper that reviewed the federal approach and the studies made by the General Accounting Office, the General Services Administration, the Office of Federal Procurement, the American Institute of Architects, and the American Bar Association's Model Procurement Code, Bower concluded that there is no easy solution to the architect-engineer selection question. The basic concern of the public agency is to obtain the highest quality professional service at the best price and with the least opportunity for favoritism. Obviously, the profession is concerned about the manner in which professional services are marketed in the public sector.

Doman reported that the Pennsylvania Department of Transportation selects consulting engineers on a competitive basis. Basically, the procedure calls for requesting letters of interest by way of public advertising. The Selection Committee then reviews all letters and narrows the choice to three consultants based on criteria established in the regulations. The next step involves the district engineer who conducts a meeting with the three consultants to explain the project and discuss any potential problems before request-

ing a proposal from each. One of the elements that must be included in the consultant's proposal is engineering cost, which must be evaluated by the Selection Committee.

After 5 years of experience with the selection system, Doman reported that in two-thirds of the instances the highest rated firm was selected, and in 82 percent of these instances the highest rated firm was the lowest bidder. "Such a result is not really surprising since the highest rated understood the job best and thus was better able to bid low," Doman said. The system has substantially reduced the cost of engineering services and there has been no indication of deterioration of quality of service, he added.

Irwin L. Schroeder, Regional Counsel, the FHWA, Albany (formerly Regional Counsel, FHWA, San Francisco, and Assistant Chief Counsel Environmental Law and Right of Way, the FHWA, Washington, D.C.) presented the federal perspective. According to Schroeder, federal agencies under the Brooks law are required to look at qualifications, make a short list of the most qualified, and then review price in the selection process. He advised that in the federal-aid area the FHWA has not directed that the Brooks law must be followed, but has indicated that states must be competitive to the extent practical.

### Truck Safety Discussed

A panel discussion on truck safety was moderated by Victor J. Perini, Jr., General Counsel, Highway Users Federation for Safety and Mobility. In his opening remarks, Perini noted that 70 percent of the truck accidents involve automobiles and 70 percent of the truck accidents involve driver error. He recommended that because the classified driver licensing system is being implemented, state motor vehicle administrators should be given immunity in tort actions, at least until licensing classification is settled.

Earl B. Eisenhart, Administrative Assistant for Legal Services, American

Association of Motor Vehicle Administrators, addressed truck driver licensing. His organization has opposed federal licensing of truck drivers on the grounds that it is not feasible. However, two state initiatives have been recommended that could aid truck driver licensing by states: (a) a driver-license compact to allow the home state to recognize conviction in another state and to prohibit more than one license per driver, and (b) a classified licensing system.

"What the States Can Do About Truck Safety" was the topic discussed by Ian S. Jones, Director of Engineering Research, Insurance Institute for Highway Safety. According to Jones, by far the worst safety problem with trucks is that of inadequate brakes. In full operating condition, a truck traveling 60 mph takes about 250 feet to stop on dry pavement (an empty truck needs 300 feet), which is twice the average stopping distance of a car. On wet pavements the situation worsens. Problems are compounded by many truckers who remove their front brakes, brakes that are frequently not adjusted; inadequate maintenance of brakes; and incompatibility between tractors and trailers that increases the delay from hitting the brake pedal to brake application and also produces unbalanced braking that leads to loss of control.

In his remarks during the panel discussion, Richard P. Landis, Associate Administrator for Motor Carriers, FHWA, stated that the Bureau of Motor Carrier Safety recognizes that a safety enforcement partnership with the states is needed and that he is doing his best to gain state cooperation. On the subject of grandfather rights regarding size and weight, Landis noted that a court in South Dakota ruled that the state, not the FHWA, has the final word on whether or not grandfather rights exist. He said that he is pressing for a standard weight for the entire country in order to remove the FHWA from the grandfather clause problem.

Landis had a tip for law enforcement officials: the FHWA has discovered that between 5:00 and 6:00 a.m., remote equipment reveals 60 percent of the trucks to be overweight.

### Update on Environmental Law

The workshop's yearly update on environmental law was given by Edward V.A. Kussy, Assistant Chief Counsel, Right of Way and Environmental Law Division, FHWA, who also serves as chairman of TRB's Committee on Environmental Issues in Transportation Law. Kussy discussed reassessment of Environmental Impact Statements (EIS) in those cases when the EIS is dated, and warned against the misuse of words. Misuse of the word "significant" played a big part in dooming the Westway Project in New York City, Kussy noted. In the draft EIS the words "significant effect on striped bass" were used. However, in the final draft, these words were eliminated with no explanation. According to Kussy, the judge seized this issue, spent 4 weeks of testimony on the word significant, finally decided that the effect on the fish was in fact significant, and killed the project.

A number of cases involving recent environmental law decisions by the courts were reviewed by Kussy. (Written material was distributed to all workshop attendees, all chief counsels not in attendance, and all others who subscribe to Area 70-Law.)

### Getting a Bill Through Congress

"Getting a Bill Through Congress" was the subject covered by Frank L. Calhoun, Assistant Chief Counsel, Legislation and Regulations Division, FHWA. Although the FHWA, through Calhoun's office, will give states technical assistance, the agency will not support a state bill. It is important, Calhoun advised, to obtain as much help as possible to identify the lobby groups in Washington, such as AASHTO and ARBTA, that may support the state bill. Calhoun suggested setting up a working group

with all those interested in the bill; lobbying the state's congressmen and the committee in interest; and using one-page fact sheets, briefing books, and Dear Colleague letters to move a bill. The states must keep after the bill through all steps in the legislative process; if it gets to the floor, there is a good chance it will pass.

### Highlights of State Transportation Law, 1985-1986

The session on "Highlights of State Transportation Law, 1985-1986" was handled differently this year, with workshop attendees agreeing that the format proved to be more valuable and informative. In past years, state representatives were called on alphabetically to report on recent decisions in the field of transportation law or recent statutory enactments or proposals in their states, or to request help in solving specific problems. As a result of calling every state, it appeared that each felt an obligation to respond even if items of little significance were reported. This year each individual who wanted to be heard was asked to submit in advance a list of cases with caption, citation, and type of case. Those who did so were called on first. Others then were allowed to report or comment.

### Observations

The proceedings of the session on Highlights of State Transportation Law, 1985-1986, were tape-recorded for the first time this year. Transcriptions of the tapes, along with copies of all papers, will be distributed to all workshop attendees, all chief counsels not in attendance, and all others who subscribe to Area 70-Law.

If the attendees previously believed that a negligence case could not be presented in an exciting manner, the Texas delegation's presentation of "Can The Highway Tort Defense Case Be a Thriller For the Jury?" shattered that notion. The cast was made up of Grady Click, Assistant Attorney General, Texas Office of the Attorney General; William Nalle, Accident Reconstruction Engineer, Austin, Texas; and Joseph D. Blaschke, Assistant Research Engineer, Texas Transportation Institute, College Station, Texas.

Click led off with an opening that he had recently used in a negligence case he defended and won on behalf of the Texas Department of Highways and Public Transportation. Blaschke followed with testimony he had given in a case, and Nalle then showed slides and videotapes of an accident case he had reconstructed and successfully testified for the defense. Although all three talked about different cases, the result was nothing less than a spectacular presentation.

As Ralph R. Bartelsmeyer stated in the opening speech of the First Annual Workshop on Transportation Law: "[I]t is most important that those shouldering the administrative responsibility of the huge highway transportation program, both engineers and lawyers, recognize that they can participate to only a very limited extent in the actual details of research needed to provide the best result." Although this is still true today, one of the best ways for administrators to subject their lawyers to ongoing research and to have an impact on needed legal research is to authorize their legal staff to be represented at the TRB Annual Meeting each January and the Annual Workshop on Transportation Law each July.