

The Transportation Law Education Study

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I. INTRODUCTION

Transportation is a cornerstone of life in the United States. It is the basis for the historical and future development of the country. Everything is affected by the movement of goods and individuals, whether through air, rail, trucking, maritime, or public transportation services. All goods manufactured or sold in the United States as well as the movement of individuals are subject to a myriad of rules and regulations regarding transportation at the international, federal, state, and local levels or some combination thereof.

Consequently, there are few areas of legal practice that are not affected by transportation-related activities. And yet, there are virtually no courses specifically designed for the study of Transportation Law in any of the 176 ABA-approved law schools. There are scattered courses in Admiralty and Maritime Law, and a few that deal with aviation and airports; however, transportation tends only to be dealt with as a part of other subjects, if at all.

Owing to this lacuna in legal education, a group of students from Benjamin N. Cardozo School of Law decided to investigate the reasons for this omission from law school curricula. This report is a summary of how they approached this task and the initial findings they have produced.

The project was sponsored through the *Transportation Law Journal* (TLJ) of the University of Denver and the Center for Transportation Studies at the University of Denver College of Law. Key support was provided by the Transportation Law Society of Benjamin N. Cardozo School of Law of Yeshiva University. These institutions recognized that no research had been done evaluating the training of attorneys for this important field and that this lack of information needed to be addressed.

II. PURPOSE

This study was undertaken as a step towards evaluating and improving the training of attorneys in the legal fields related to Transportation Law.

The survey format selected was not intended to determine whether transportation is a specific field of legal study, nor was it meant to suggest that schools, practitioners, or professional associations are at fault. The results however, do provide a wealth of information that can be used to understand the dynamics of the various areas of practice.

The survey provides empirical proof for the proposition that there exists a disjunction between what is practiced and taught regarding transportation-related law. This conclusion is so apparent that it virtually leaps off the pages of raw data. There is a growing chasm between what private and public practice requires of graduates entering the field and what law schools perceive those requirements to be — if they perceive them at all. District Court Judge Harry T. Edwards, in the *Michigan Law Review*, has recently expressed his concern over the growing disjunction between the teaching and the practice of law. In doing so, Judge Edwards notes that, “[w]hile the schools are moving toward pure theory, the firms are moving toward pure commerce, and the middle ground — ethical practice — has been deserted by both. . . .”¹ The initial findings of this study tend to support his assertion regarding the teaching and practice of transportation and transportation-related law.

Informed opinion leads to change. As more is done to investigate the disjunction between teaching and practice, more can be done to search for solutions.² The legal academic community must recognize that the practice of transportation and transportation-related law is a significant and growing field of legal expertise. In realizing this, it becomes incumbent upon the academic branch to realign itself with the realities of practice and reflect them in course curricula. Only by making this effort can the legal profession maintain a degree of uniformity within its ranks that will ensure the highest standards of ethical practice.

III. SCOPE AND GOAL OF THE PROJECT

Transportation law encompasses many different legal elements and interests. These elements are as diverse as torts, undercharges and the

1. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191, 2191 (1993) (quoting Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 34, 41 (1992)).

2. See generally 91 MICH. L. REV. 2191 (1993) (this entire issue was dedicated to the discussion concerning the growing disjunction between the teaching and practice of law.)

regulations proposed under the North American Free Trade Agreement (NAFTA). Therefore, the project was organized to account for as many interests as possible. Many of these interests overlap, thereby providing a wealth of correlative data that can be used to gain a greater appreciation of the overall dynamics associated with the practice and teaching of Transportation Law and its related subject areas.

Four distinct groups are highlighted as having basic knowledge and interest in the field:

1. Law schools.
2. Attorneys active in transportation law.
3. Public and private companies active in the field.
4. Government officials.

A. LAW SCHOOLS

This group is responsible for the training of new attorneys. Historically, reactions and revisions happen slowly at this level. The Socratic method teaches students how to think as lawyers and prepares them for survival in the courts and justice system. In terms of practicality, the implementation of new curriculum is slow and rarely keeps pace with the changes in practice. Indeed, the nearly exclusive focus on decided (usually appellate) cases suggests that, unless and until legal developments have worked their way into the jurisprudence of the courts, they are virtually banned from the classroom. The recent growth, however, of clinical programs and the greater use of adjunct faculty by law schools, indicates that there is an attempt being made to bridge this delay. The accelerated demands of changes in practice require this. The ABA, in its recent report on legal education,³ emphasized the urgency of this shift.

The survey used by this study was designed to reflect the changing academic nature of the schools surveyed. A group of legal academicians was asked separately to pigeonhole each of the respondent law schools into one of three categories depending upon the reputation of the school's curriculum as being focused primarily on either (A) academic study; (B) a mixture of academic study and practical training; or (C) practical training. Where appropriate, the differences in the respondent law schools' curriculum focus are emphasized throughout this article.

Transportation law appears to be almost entirely left out of the processes that are bridging the delay in translating changes in practice with law school instruction. Indeed, transportation law, as a field, ap-

3. Report of The Task Force on Law Schools and the Profession, American Bar Association, Legal Education and Professional Development — An Educational Continuum, 330-34 (1993).

appears to be, for the most part, neglected as an area of legitimate academic concern. This was not always the case.⁴ The survey results offer empirical proof that this is indeed the case today. What may come as a surprise to readers is how pronounced transportation law's exclusion really is.

The key issue that ultimately arises from this paper is the question of why transportation law is being left out of legal education when it is an area of such considerable concern to practitioners. Judge Edwards notes that the last two decades have seen the focus of law school curriculum shift from the teaching of doctrinal material to a more cross-disciplinary and theoretical nature.⁵ This indeed is the case at many of the nation's law schools, and is the most likely candidate upon which to pin the blame for the disjunction between the teaching and practice of transportation law.⁶ It need not be argued, but can be asserted from our findings, that this disjunction is growing and is already resulting in adverse consequences for the legal profession.

Such a situation needs to be rectified. It sounds a siren bell that raises subsequent issues. The most obvious issue raised by the survey findings is whether the omission of transportation law from law school curricula is due to a lack of communication between educators and practitioners. Are schools ignoring information coming their way, or are they altogether out of touch with what is happening in practice? Another issue that needs to be addressed is whether this disjunction is solely the fault of the law schools, or are practitioners and legal associations also responsible? This paper does not attempt to answer those questions,

4. See Frank N. Wilner, COMES NOW THE INTERSTATE COMMERCE PRACTITIONER, 23 ICC PRAC. J. 1131 (1993). "Almost twenty percent of the Supreme Court's docket affected railroads during the 1930s. . . ." (this reflects the pervasive nature of transportation law in the 1930s. The law affecting carriage by railroad was a commonly referred to area by law schools at that time).

5. See generally Richard A. Posner, *The Deprofessionalization of Legal Teaching and Scholarship*, 91 MICH. L. REV. 1921 (1993).

6. With the emphasis now on introducing cross-disciplinary courses, niche courses, and clinical programs into the law school curriculum that effectively account for areas of legal practice that have not been dealt with at the doctrinal level, the inertia to adapt doctrinal courses (i.e. Contracts, Torts, Real Property, Constitutional Law, Civil Procedure, and Criminal Law) to account for shifts in practice, has waned. This has meant that where Contracts or Torts could readily be adapted to incorporate a significant transportation-related component that would reflect the realities of practice, the impetus to do so is no longer there.

Furthermore, recently established niche courses (i.e. Environmental Law, Hazardous Materials Law, Regulatory and Administrative Law, etc.) that are arguably entering the mainstream of law school curricula, some of which may yet become quasi-doctrinal, and which relate directly to the field of transportation practice, are not being fully adapted to reflect the growing importance and pervasiveness of transportation.

The net result is that transportation law is being left out of this shift in instructional emphasis. It is neither covered by doctrinal, cross-disciplinary, niche, or clinical programs of study.

rather it provides empirical data to support the assertion that a major disjunction does exist.

B. ATTORNEYS ACTIVE IN THE FIELD

Attorneys know what it takes to succeed in a transportation-related practice. Some take it as a *given*, that they have to learn the field while on the job. Other attorneys have an interest in furthering the field through the traditional training ground provided by the schools so as the practice of transportation law can be developed in future attorneys as quickly and fully as possible. Persons in this group, however, may not be fully aware of the difficulties in creating change at the law school level. Few have the time to attempt to make what they see as needed changes. The survey points out the attorneys' needs and relates them directly to the attitudes prevalent among educators. The differences are glaring.

C. PUBLIC AND PRIVATE COMPANIES ACTIVE IN THE FIELD

This group encompasses the companies or businesses in the field of transportation that use attorneys' services. It can be divided into two subgroups: public and private.

Public agencies are primarily concerned with the carriage of passengers. They do have freight concerns, but their main goal is to carry persons from point "A" to point "B". Many of the problems of this group fall into two areas of legal activity: labor law and tort law. The amount of legal work undertaken in these areas is enormous, yet schools appear oblivious to the specific needs of these transport-related agencies.

Private companies have much more diverse transport related interests. These involve national, local, international, and extraterrestrial concerns. The companies may transport passengers, but are more likely to transfer freight. They may involve one type of carriage or be intermodal in orientation. The crossing of state and national lines is common, and the level of bureaucratic and regulatory matters increases daily — except when deregulation occurs, which also leads to greater use of lawyers in the long run. There is great interest in Interstate Commerce Commission (I.C.C.) rulings as well as claims involving increased areas of litigation such as environmental concerns.

As a result of this increasingly multi-faceted legal activity many questions are being raised. For example, in this day of controlling costs for survival, are more legal services being contracted out or being kept in-house? If the former, are all services being contracted out or just some? If some legal services, which ones and why? These are questions and issues the survey posed. Consequently, some profound shifts

in the market place were pin-pointed. This presents further questions for the schools. Are they acknowledging these market force realities of doing business? The survey's results suggest some unsettling initial conclusions.

D. GOVERNMENT OFFICIALS

The Federal Government has deregulated many functions of the transportation industry. With this deregulation comes additional functions at the state and local level as well as increased legal activity in dealing with the consequences of deregulation. Over-charging was the prime example. The transition from one political philosophy to another that occurs with the changing of administrations further complicates the especially dynamic nature of governmental activity.

The function of government attorneys is now more important than ever. Whether in the drafting of administrative proposals and legislation, the advising of the executive branch, or the litigation of complaints arising under the current purview of governmental activity, the challenges facing legal officials in transportation are vast and increasingly complex. This raises the question as to whether the training of future legal government officials reflects the dynamic changes occurring within the governmental sphere, and of concern to us, the sphere of transportation law.

In order to begin to answer this question, the survey asked respondents to list the major transportation-related areas of law that government officials are involved with, which areas are handled in-house and which are contracted out, and what officials would like to see emphasized in the future training of legal personnel.

IV. STUDY GOAL

These four core groups make up the legal minds and interests that should be accessed in order to gain an overall appreciation of transportation-related legal activity. Having surveyed these groups, the goal of the study is to assess what each group perceives its function to be, what areas of law it sees as areas for potential growth, and what skills it requires of its members to meet the challenges of today and the future. By asking law schools for their assessment of the value and importance of transportation law and transportation-related law, the study is able to identify areas of disjunction between what is emphasized in the practice of transportation law and what is taught at the law school level.

V. SURVEY DESIGN AND ADVISORY BOARD

Four prototypical survey instruments were put together by the Executive Committee of the Transportation Law Society of Benjamin N. Car-

dozo School of Law. The surveys were then reviewed and edited by a group of knowledgeable persons from different areas of transportation law.

This editing process was carried out on three generations of the questionnaires before the final survey instruments were readied for distribution in May, 1993.

The Advisory Board for the study includes bus company officials, consultants, government officials, law professors, practicing attorneys, and statistical experts. The members are:

VI. TRANSPORTATION LAW EDUCATION AND SURVEY ADVISORY BOARD

<u>NAME</u>	<u>AFFILIATION</u>
Robert Alderson, Esq.	Transportation Law Association
Paul Stephen Dempsey	University of Denver
John Farrell	ATE Management
Jalal Haidar	Center Transportation Studies
J. Scott Hamilton, Esq.	Denver Attorney
Cornelius Henry	Applied Transportation Systems
Michael Herz	Benjamin N. Cardozo School of Law
Richard Lam	Center for Urban Studies
James McDaniel	Transportation Research Board
Ann Pougalis, Esq.	San Francisco Attorney
Dr. Mareleyn Schneider	Yeshiva University — Statistician
Ronald Shapss, Esq.	Ass'n Transportation Practitioners
Jay Smith	AASHTO
Richard Stocking, Esq.	Counsel to Kitsap Transit
Joseph Varneke	General Manager Wichita Transit

All 176 ABA approved law schools received a questionnaire. The original survey was distributed in May 1993, with a follow-up mailing in August 1993. This group is referred to in the following data as "SCHOOL".

In all, 186 attorneys were chosen at random from a list provided by the Transportation Law Association. There were two mailings, one in May and one in July. This group is referred to in the following data as "ATTORNEY" or "ATT'Y".

The third mailing was aimed at private companies and corporations with major interests in the transportation legal field. One-hundred and forty non-attorney members of the Association of Transportation Practitioners received questionnaires. There were two mailings, one in May and one in July. This group is referred to in the following data as "PRIVATE" or "PRACTITIONER".

The American Public Transit Association (APTA) is the organization that organizes activities and lobbying efforts on the behalf of public

transit. Upon request from the study group at Cardozo, APTA agreed to distribute the survey instrument to the its Law Committee. There was one mailing to this group in May. This group is referred to in the following data as "PUBLIC".

The last survey instrument was distributed to government officials. The American Association of State and Highway Transit Officials (AASHTO) was selected as the most appropriate group to suggest a mailing list in this category. After some discussion, AASHTO provided a mailing list of their Law Committee members. Eighty-one officials received the questionnaire in one mailing that occurred in May. This group is referred to in the following data as "GOVERNMENT" or "GOV'T".

VII. RETURN RATES

The return rates for the five samples were:

PUBLIC	63 out of 173	35%
GOVERNMENT	42 out of 81	53%
ATTORNEY	126 out of 186	67%
PRIVATE	59 out of 140	42%
SCHOOL	98 out of 176	56%

VIII. ANALYSIS

The raw findings of the study are listed below. All of the questions asked on the four surveys are included. The questions are listed, for ease of assimilation, in an order starting with those related to respondents' experience in the field and what their law school experience provided, current law school offerings, and finally, the needs of those engaged in practice and what they believe will be the areas of growth in the field.

A. RESPONDENTS' EXPERIENCE IN THE FIELD

Years of Experience

1. *How many years have you been in practice? (Attorney)*

Of the attorneys who responded, there was a range in level of experience from 0 - 43 years. The mean was 21.37 years and the median level of experience was 20.0 years.

Years in Transportation Law

2. *How many of those years have been directly related to transportation? (Attorney)*

As with the previous question, the amount of time spent in the area of transportation law varied from 0 - 43 years. The mean recorded was 19.03 years and the median was 20.00 years. The difference of 2 years

in both the mean and median recorded here as compared with those recorded in the "years of experience" question suggests that not all attorneys practicing transportation law started out in the field.

Attorneys generally spend the first year or two after graduation finding their place in the legal profession. Once that niche is found, the attorneys develop their expertise through practice. The results from the transportation attorneys who returned the questionnaire compare very closely to other evaluations and other studies.⁷

PERCENTAGE OF PRACTICE RELATED TO TRANSPORTATION

3. *Approximately how much of your practice is related to transportation? (Attorney)*

	<u>ATTORNEY</u>
Up to 33%	28%
Somewhere between 33% and 66%	27%
Somewhere between 66% and 90%	21%
More than 90%	22%
DK/NA (Don't Know/No Answer)	2%

Distribution was a very even here. A follow-up survey that delves further into the makeup of the practices may ascertain a more in-depth analysis of the types of legal activity and the amount of time they consume. Almost half of the attorneys who are active in the field of transportation law spend more than two-thirds of their time working strictly in the field. The results seem to indicate that transportation law is a separate and definable area of practice. This issue can be analyzed in greater detail by comparing the activities and interests of those who spend more time in the field with those who spend less.

B. RESPONDENTS' INTEREST WHILE IN LAW SCHOOL

STUDENT INTEREST

4. a. *In school, how interested were you in transportation law? (Attorney)*

b. *If a program or courses in transportation were offered at your law school, how interested do you think your students would be? (School)*

7. See Sleeper, Johnson and Schneider, *Transportation Attorneys Speak Out on the Practice of Law*, 21 *TRANSP. L.J.* 13 (1992).

	<u>ATTORNEY</u>	<u>SCHOOL</u>
Extremely	14%	1%
Moderately	11%	9%
Fairly	4%	21%
Not Much	27%	54%
Not At All	41%	1%
DK/NA	2%	14%

Twenty-five percent of attorneys working in the field of transportation today had some interest while in school. However, 68% related that they had little or no real interest in the field at that time. The law school responses may indicate unfamiliarity with the issue more than an actual appreciation for this concern. The 14% DK/NA response tends to indicate a great deal of uncertainty here. Predominantly mid-range/non-committal responses are also typical for respondents on surveys when asked to give subjective assessments. This is often because they simply might not have an informed opinion but do not wish to appear unknowledgeable by giving a DK/NA response. The fact that only 1% said "not at all" also tends to reveal unfamiliarity as opposed to a definite affirmative or negative response.

C. LAW SCHOOL COURSES

COURSE AVAILABILITY

5. *During the last five years, has your law school offered courses specifically in transportation law? (School)*

	<u>SCHOOL</u>
Yes	9%
No	89%
DK/NA	2%

6. *During the last five years, has your law school offered a program or concentration in transportation law? (School)*

	<u>SCHOOL</u>
Yes	2%
No	96%
DK/NA	2%

7. *If no, has your law school discussed transportation law as a viable separate area of study? (School)*

	<u>SCHOOL</u>
Yes	4%
No	78%
DK/NA	18%

Virtually no ABA-approved law school offered specific transportation programs in the last five years. Only a few others have ever offered a

course. At most schools the topic has not even come up for discussion. Transportation law is a dynamic area of legal activity that is not being recognized by the law schools. The few schools that had offered courses are in the midwest or west. There seems to be no acknowledgment of transportation law as an independent area of legal study by the schools in the east.

COURSE OFFERINGS

8. *Which of the following courses in your law school, directly address transportation issues? (School)*

	<u>SCHOOL</u>
Administrative	34%
Trial Practice (Litigation)	6%
Legislation	6%
Contracts	4%
Government Contracts	8%
Labor	10%
Tax	6%
Torts	18%
Regulatory	20%
Environmental	30%
Real Estate	4%
Criminal	1%
Other	9%

Law schools consider transportation law to be an area that is mainly administrative and regulatory. The results indicate a growing recognition of transportation-related issues in environmental law and tort liability, but such recognition does not carry over into commercial areas.

9. a. *What areas of your law school education have you found relevant to transportation? (Attorney)*
 b. *What areas of a law school education do you think are relevant to the practice of transportation law? (School)*

	<u>ATT'Y</u>	<u>SCHOOL</u>
Administrative	71%	77%
Trial Practice	61%	27%
Legislation	21%	56%
Contracts	75%	47%
Environmental	17%	67%
Real Estate	14%	31%
Criminal	2%	14%
Labor	28%	46%
Tax	15%	39%
Torts	39%	49%
Regulatory	42%	80%
Gov't	7%	58%
Others	9%	7%

In terms of relevance to actual practice, there is little agreement between private companies and law school deans as to the importance of subject areas that deal heavily with transportation-related legal work. While there is a fairly close relationship in the areas of administration and torts law, there is a meaningful gap in every other area. It must be taken into account that the attorneys were commenting on their personal law school education that occurred, on average, some 23 years ago. For example, environmental law was not taught in the late 1960s or early 1970s, while today it is a viable subject. Any meaningful comparison should take into account differences between current curricula and courses taught in 1970.

10. *What areas of a law school education do you think could be readily adapted or more fully developed in areas of transportation? (Attorney) (School)*

	<u>ATTORNEY</u>	<u>SCHOOL</u>
Administrative	71%	55%
Trial	37%	15%
Legislation	22%	35%
Contracts	49%	25%
Environmental	50%	38%
Real Estate	6%	22%
Criminal	3%	8%
Labor	33%	27%
Tax	18%	16%
Torts	25%	26%
Regulatory	62%	62%
Gov't	14%	30%
Other	10%	5%

This question shows a much closer relationship between schools and attorneys than is seen in the question about course relevance. Consistent with what was indicated in the earlier question, law schools feel

that there could be growth in the areas of administrative and regulatory law. No other category gathered more than 40% recognition. As discussed earlier, the growth in environmental law came in next, tying-in nicely with later questions about legislation. Attorneys agree that administrative, regulatory, environmental and contracts law rank high as areas that can readily be adapted to transportation law.

11. a. *What areas of a law school education do you think should be more specifically related to transportation? (Public) (Government) (Private)*

b. *What areas of a law school education do you think should be adapted or more fully developed in areas of transportation? (School)*

	<u>PUBLIC</u>	<u>GOV'T</u>	<u>PRIVATE</u>	<u>SCHOOL</u>
Administrative	36%	28%	37%	28%
Trial Practice	16%	23%	20%	3%
Legislation	26%	48%	14%	8%
Contracts	45%	44%	75%	5%
Environmental	48%	67%	45%	17%
Real Estate	21%	2%	49%	2%
Criminal	2%	2%	7%	2%
Labor	58%	9%	25%	6%
Tax	7%	5%	15%	3%
Torts	23%	42%	5%	5%
Regulatory	53%	73%	23%	25%
Govt Contracts	71%	54%	18%	7%
Other	3%	5%	7%	4%

Each group studied has its own priorities and interests. Intrinsic in these findings is an indication how each group feels its interests could be best served in the preparation of attorneys entering their respective fields. For public transportation agencies (Public), an increased preparedness in government contracting, labor, regulatory, environmental and contracts law is considered critical. For government officials (Government), there is considerable interest in improving educational coursework related to environmental, government contracts, real estate and contracts law. Private companies (Private) highlighted contracts and regulatory law as areas needing increased educational attention. There is relatively no interest on the part of the schools in further relating specific courses towards transportation except in regulatory and environmental law.

IMPORTANCE OF LEGAL EDUCATION

12. a. *How valuable would it be for law schools to focus greater attention on transportation law? (Public) (Government) (Attorney) (Private)*

b. *How valuable would it be for law schools to focus more attention on transportation law? (School)*

	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>	<u>SCHOOL</u>
Extremely	7%	7%	7%	20%	1%
Moderately	34%	42%	31%	30%	9%
Fairly	31%	28%	32%	33%	27%
Not Much	23%	19%	26%	12%	48%
Not At All	3%	5%	1%	0%	0%
DK/NA	3%	0%	3%	5%	15%

Half of the government officials and half of the private companies feel that there is something to be gained by focusing greater attention on transportation law at the law school level. By comparison, only 10% of the law schools feel that way. In fact, over 60% of the schools believe there is no value in focusing on transportation law.

13. a. *Classroom study of transportation law is important preparation for a successful practice. (Attorney)*

b. *Classroom study is important preparation for a successful practice in the field. (School)*

	<u>ATTORNEY</u>	<u>SCHOOL</u>
Strongly Agree	7%	1%
Agree	28%	17%
Neutral	44%	43%
Disagree	15%	23%
Strongly Disagree	4%	3%
DK/NA	2%	14%

Only 35% of the attorneys feel that classroom study is important for the development of a successful practice. This is lower than the percentage of attorneys who feel very strongly that law schools should increase their offerings in transportation law. In comparison, the number of law schools that feel greater attention to transportation is needed is slightly more than half of those who believe classroom study is important preparation for transportation-oriented practice.

D. FURTHER EDUCATION

POTENTIAL GROWTH IN LAW SCHOOLS

14. a. *A Master's program in transportation law would be helpful preparation for a successful practice. (Government)*

b. *A Master's degree program in transportation law would be helpful preparation for a successful practice. (Attorney)*

c. *Do you think there would be value to a Master's program in transportation law. (School)*

	<u>GOV'T</u>	<u>ATT'Y</u>		<u>SCHOOL</u>
Strong Agree	7%	1%		
Agree	23%	37%	Yes	27%
Neutral	58%	37%		
Disagree	12%	14%	No	43%
Strongly Disagree	0%	5%		
DK/NA	0%	2%	DK/NA	30%

A quarter of the law schools feel that there is room for a Master's program in transportation law. This percentage is higher than the number of schools who believe strongly that either classroom study is important or that greater focus should be given to transportation law in regular courses. There was a strong feeling among transportation attorneys that a masters program will be useful as exemplified by the fact that over two-thirds either strongly agreed, agreed, or were neutral, and less than 20% disagreed. This indicates an across-the-board recognition for specialization in transportation law at the post-graduate level of legal education.

CONTINUING LEGAL EDUCATION (CLE)

15. *How would you rate existing Continuing Legal Education programs in transportation law, using two sets of adjectives? (Attorney)*

	<u>ATTORNEY</u>
Worthwhile	71%
Neutral/Uncertain	21%
Worthless	3%
DK/NA	5%

16. *If neutral or worthless, the reasons are: (Attorney)*

	<u>ATTORNEY</u>
Courses poorly designed	70%
Courses improperly taught	5%
Subject is difficult to teach	25%

There is fairly solid support for current programs. Whatever dissatisfaction there is comes from the way the courses are designed.

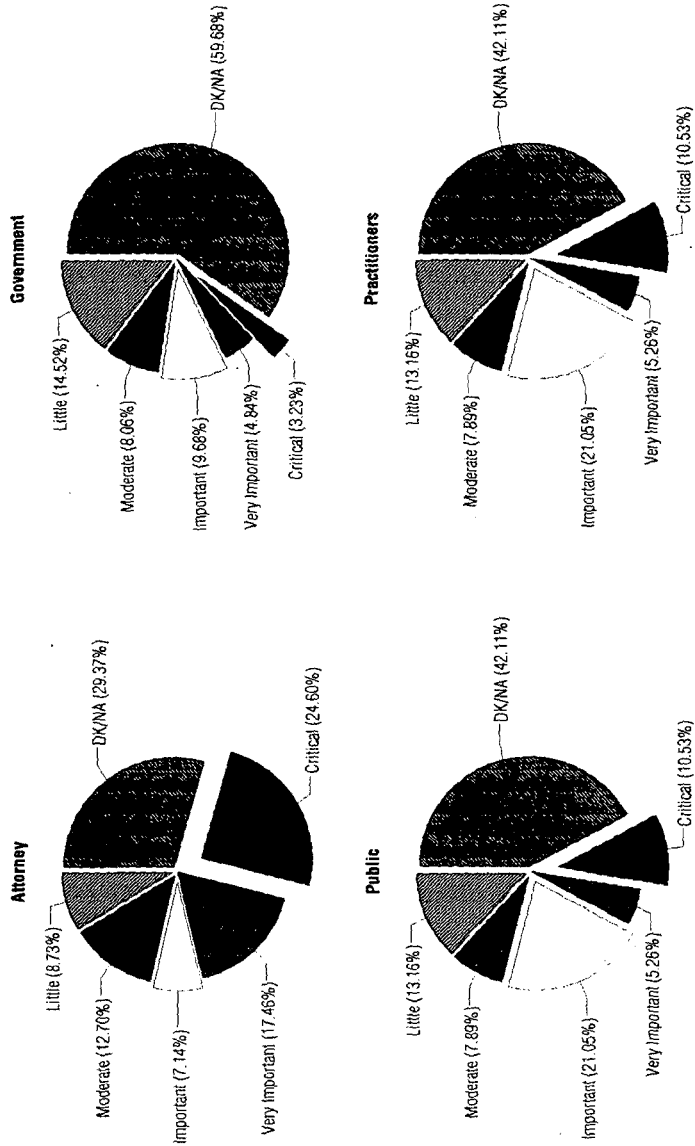
E. CURRENT LEGAL PRACTICE IN TRANSPORTATION LAW

AREAS OF GREATEST CONCERN

- 17. a. *What are the legal areas of greatest concern to your company or agency? (Public) (Government) (Practitioner)*
- b. *What are the primary areas of your practice? (Attorney)*

Areas of Greatest Concern

Administrative

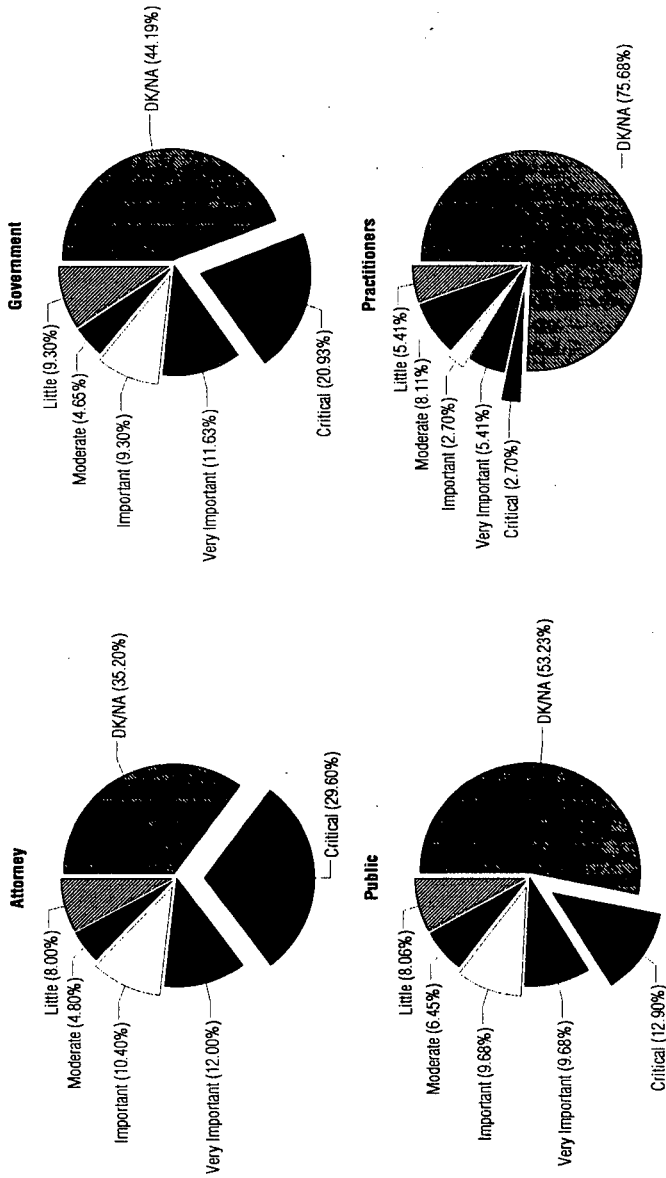


18. *When services are needed in the fields listed below, indicate whether you use primarily in-house or contracted legal services. (Public) (Government) (Attorney) (Private)*

	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Administration				
In-House	66%	98%		58%
Contract	31%	0%		22%
DK/NA	3%	2%		20%

The results indicate that providing administrative services is an important part of the activities of transportation attorneys. Forty-two percent rank it as either first or second in importance. It also ranks high with government officials. Most administrative services are handled in-house, although representatives of the private firms use contracted services almost a third of the time.

Areas of Greatest Concern Trial Practice

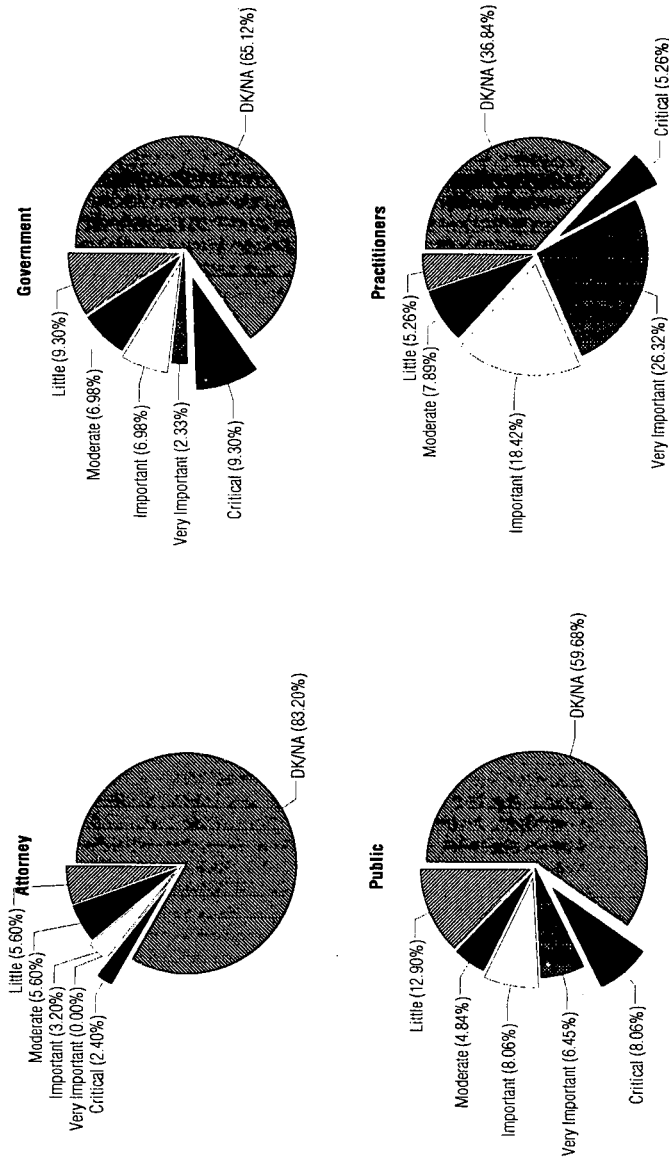


	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Trial Practice				
In-House	40%	17%		84%
Contract	57%	60%		14%
DK/NA	3%	23%		2%

More than half of the public agencies, and more than 80% of the private companies do not feel that this was one of their five major concerns. When the need does arise, the public agencies usually call in outside counsel, whereas the private companies use in-house counsel.

Areas of Greatest Concern

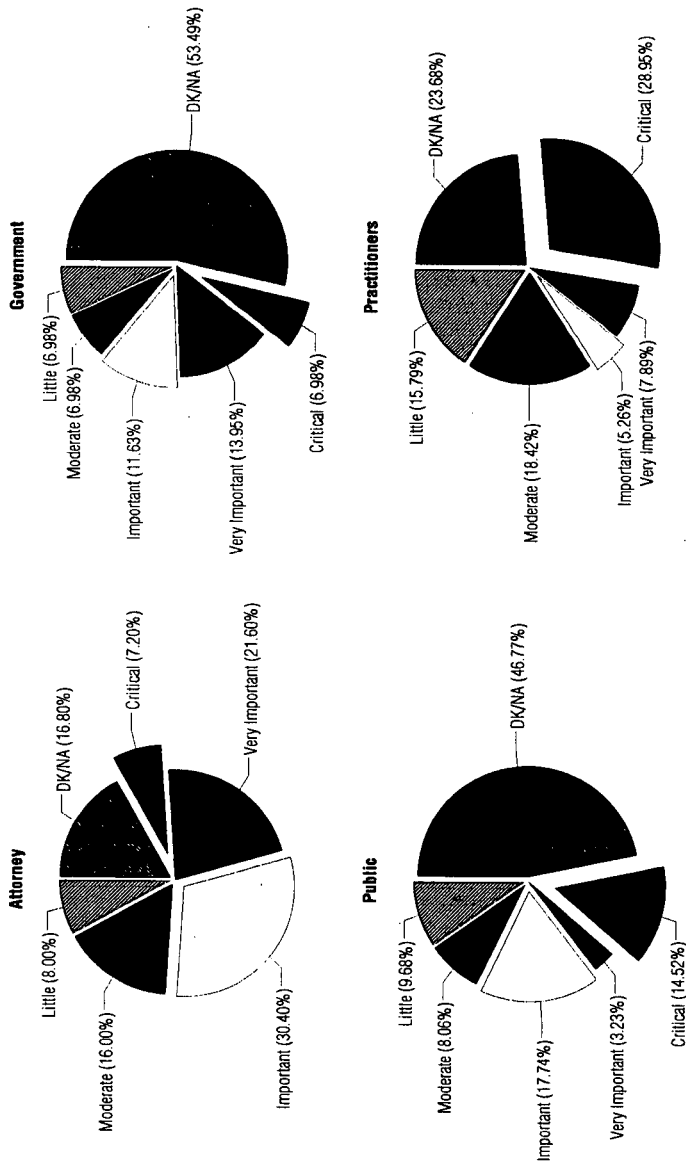
Legislation



	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Legislation				
In-House	57%	98%		45%
Contract	39%	0%		30%
DK/NA	4%	2%		25%

Only one group surveyed considers legislation to be an important part of their needs. The private companies cite legislation as a concern 64% of the time. No other group lists this area of study higher than 40%. Despite their high concern, however, less than half of the private companies dealt with legislation in-house.

Areas of Greatest Concern Contract



	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Contracts				
In-House	66%	97%		70%
Contract	32%	0%		20%
DK/NA	1%	2%		10%

Every group includes contracts as an important concern. Most contractual activity is handled in-house with only the public agencies contracting out as much as a third of their needs. Private firms list contracts as their leading concern. This is twice as often as public agencies.

Areas of Greatest Concern Environmental

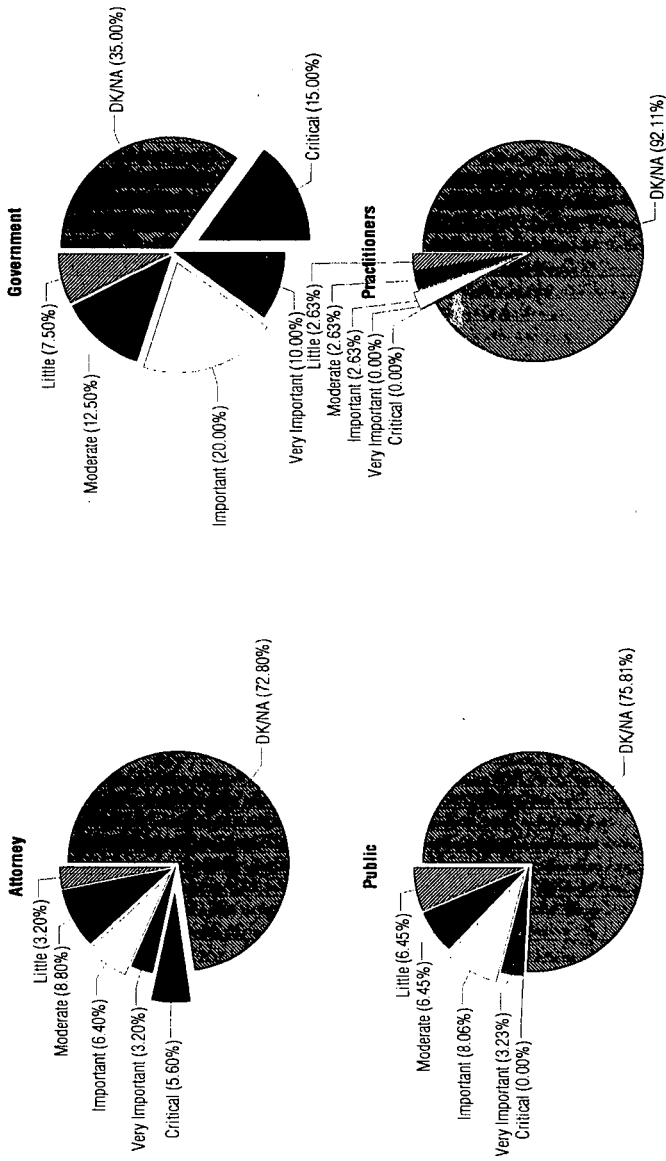


	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Environmental				
In-House	44%	95%		40%
Contract	53%	2%		37%
DK/NA	3%	2%		23%

There is an increasing interest in environmental matters, especially among government officials. The number of attorneys knowledgeable in this area is not as large as in other fields. Therefore, when services are needed they are often contracted out. The government in comparison almost always uses in-house attorneys.

Areas of Greatest Concern

Real Estate

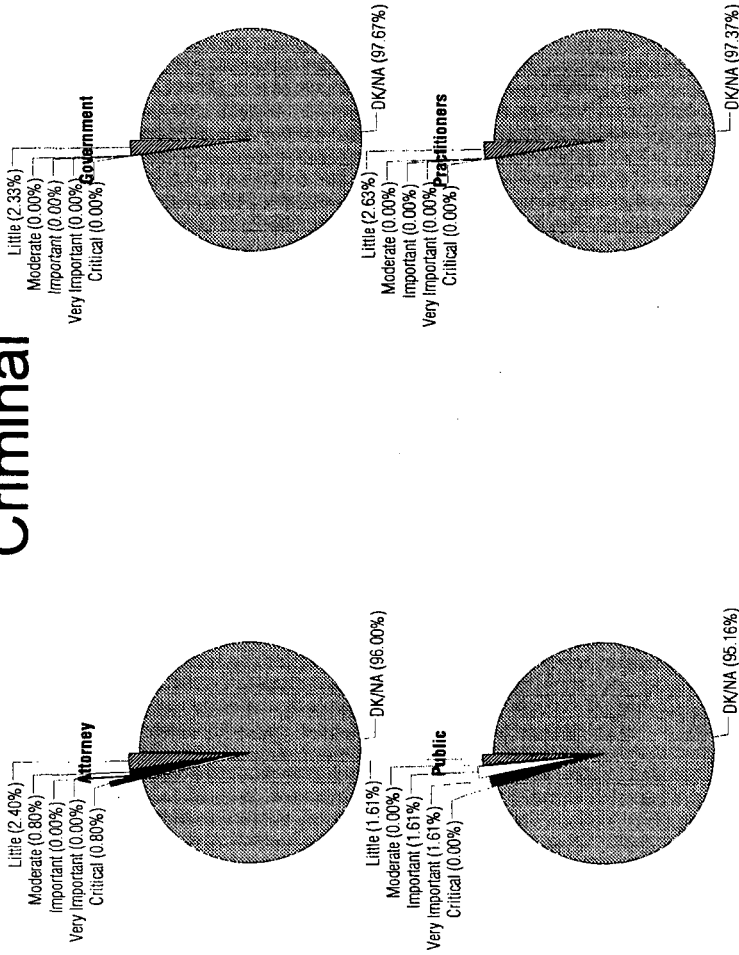


	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Real Estate				
In-House	47%	84%		35%
Contract	48%	14%		33%
DK/NA	5%	4%		32%

There is a much higher level of involvement in real estate by government officials than any other group because they're concerned with progress of government projects. In fact, one-fifth of them list it as their first priority. Attorneys had the next highest level of involvement, but just 6% of them list real estate as their first priority.

Areas of Greatest Concern

Criminal

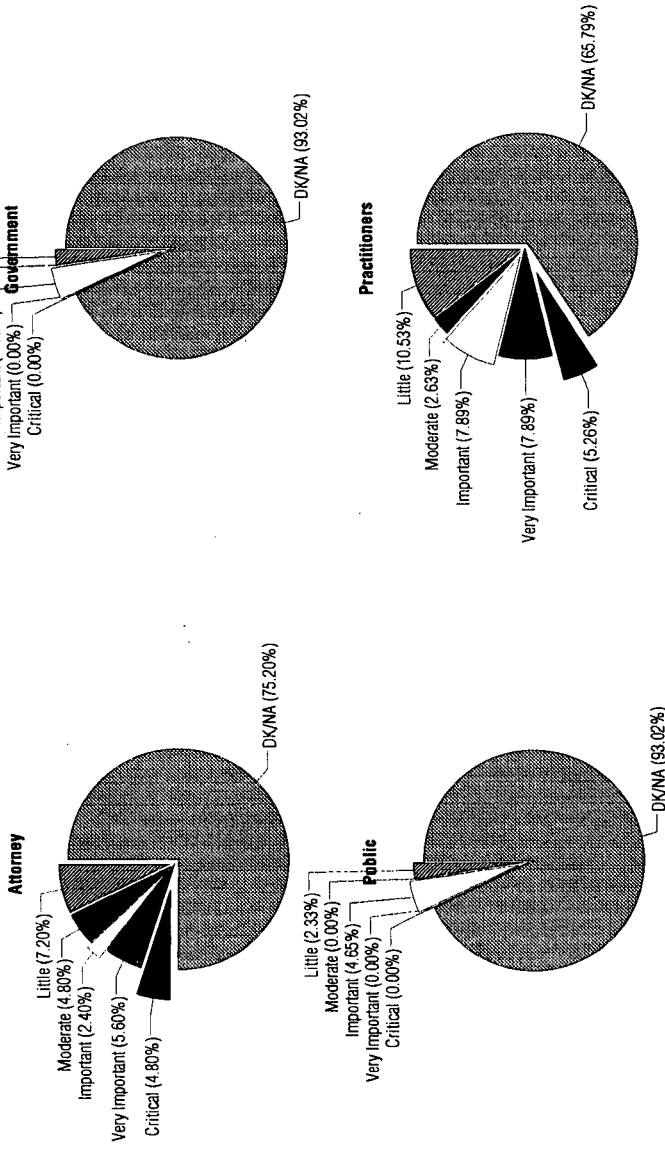


	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Criminal				
In-House	12%	40%		12%
Contract	48%	12%		48%
DK/NA	40%	49%		40%

There is almost no overlap of criminal law with transportation. None of the surveyed groups indicate any interest with criminal law in the field of transportation.

Areas of Greatest Concern

Labor Law

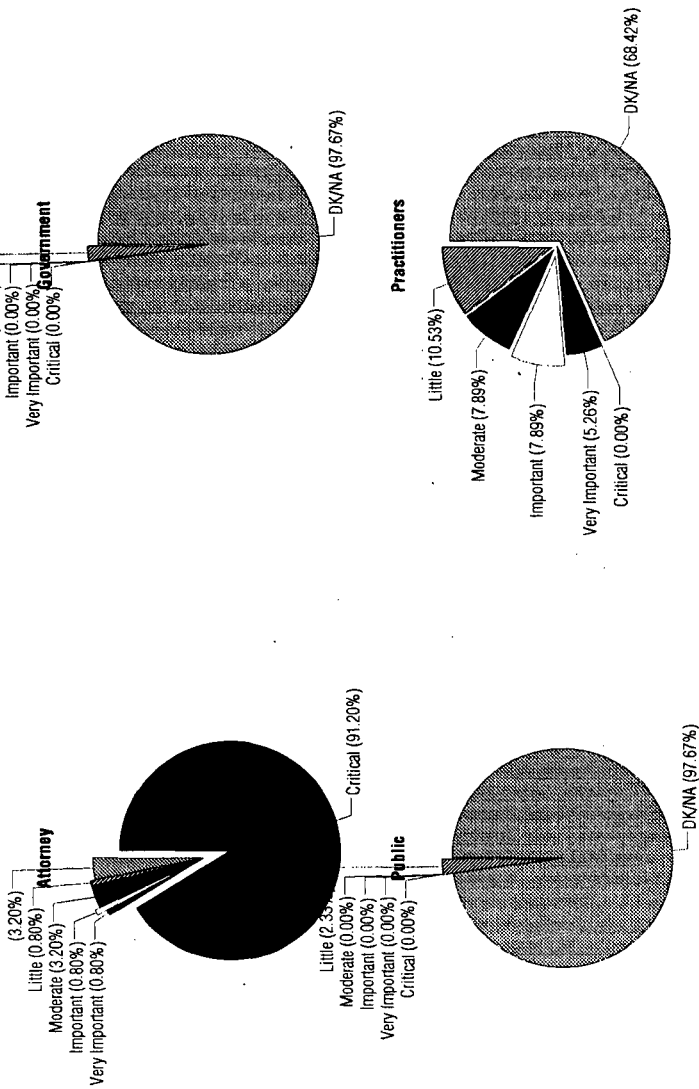


	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Labor				
In-House	37%	72%		37%
Contract	60%	9%		28%
DK/NA	3%	19%		35%

Public transportation agencies have serious concerns and interests in labor law, but they are almost twice as likely to contract the work out as are other groups. It would appear that they have not developed the in-house ability to handle their needs. Private companies and the government have fewer concerns and are more likely to handle the problem internally.

Areas of Greatest Concern

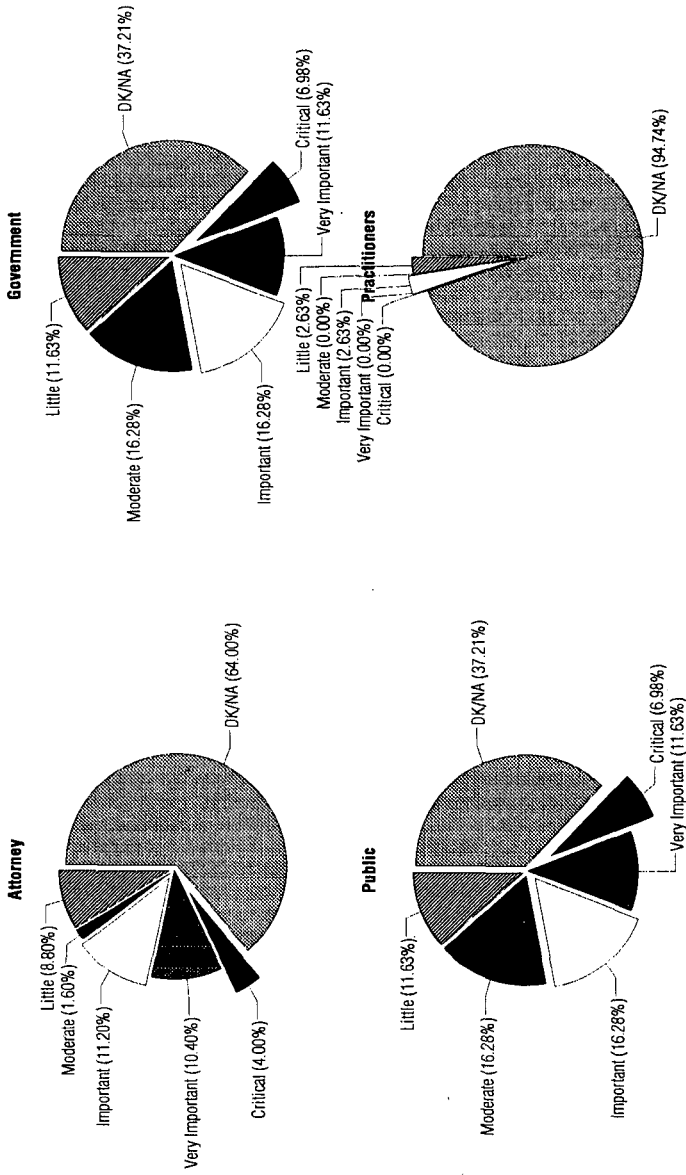
Tax



	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Tax				
In-House	18%	51%		43%
Contract	63%	9%		30%
DK/NA	19%	40%		27%

Only private companies indicate an interest in this area of law. Thirty-one percent of them place this area among their top five concerns.

Areas of Greatest Concern Torts

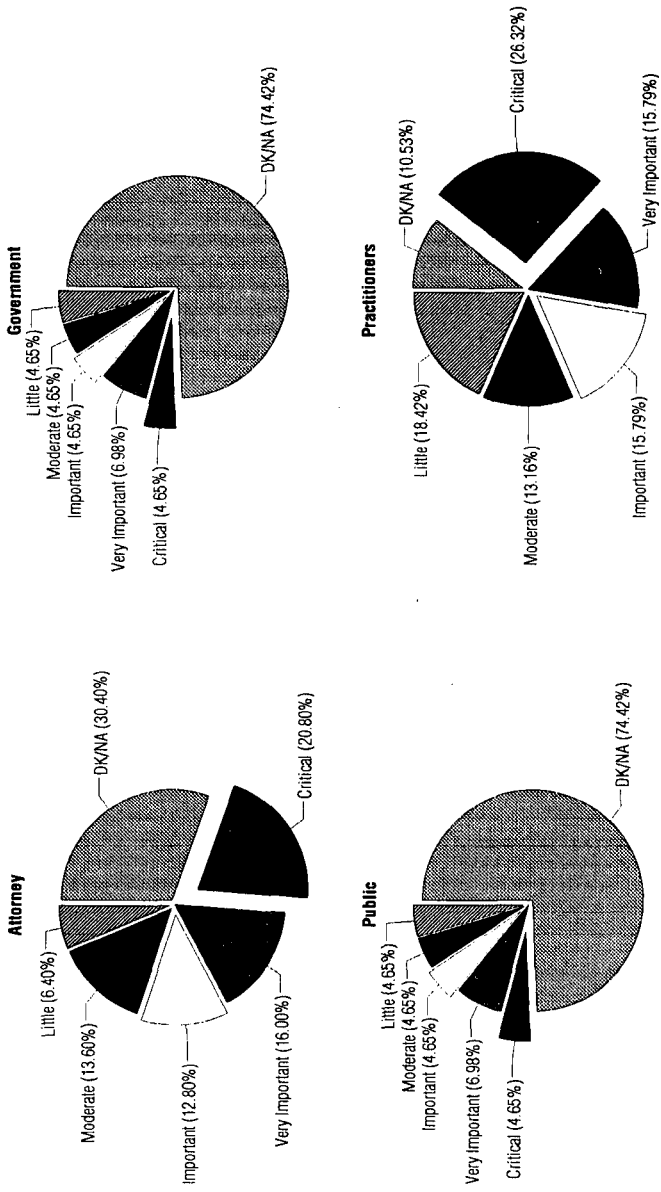


	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Torts				
In-House	34%	72%		12%
Contract	61%	26%		47%
DK/NA	5%	2%		42%

Public agencies and government officials indicate a great concern with torts. The main difference is in how these problems are handled. This area constitutes the largest percentage of contracted legal services by the government.

Areas of Greatest Concern

Regulatory

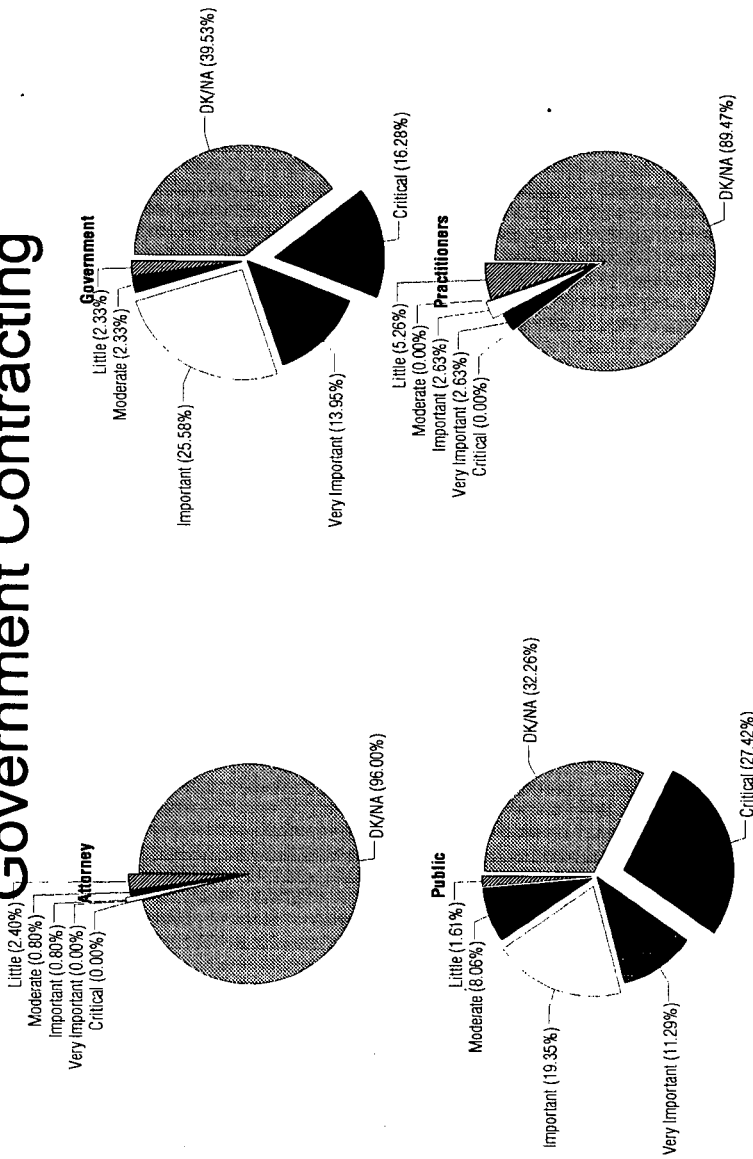


	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Regulatory				
In-House	57%	91%		50%
Contract	39%	2%		38%
DK/NA	5%	7%		12%

There is an across-the-board concern regarding regulatory matters. A full one-third of private companies list it as their primary concern. In fact, only 12% of them do not include it among their highest ranked legal concerns. Attorneys also identified it as an area of high concern. This statistic may reflect the legal prism through which government practitioners view the law. By way of illustration, an issue dealing with real estate law would be considered more a regulatory problem by a real estate attorney than by her equivalent government official, who would likely view the regulatory component as a matter of fact and consider the overall issue to be of a purely real estate nature.

Areas of Greatest Concern

Government Contracting

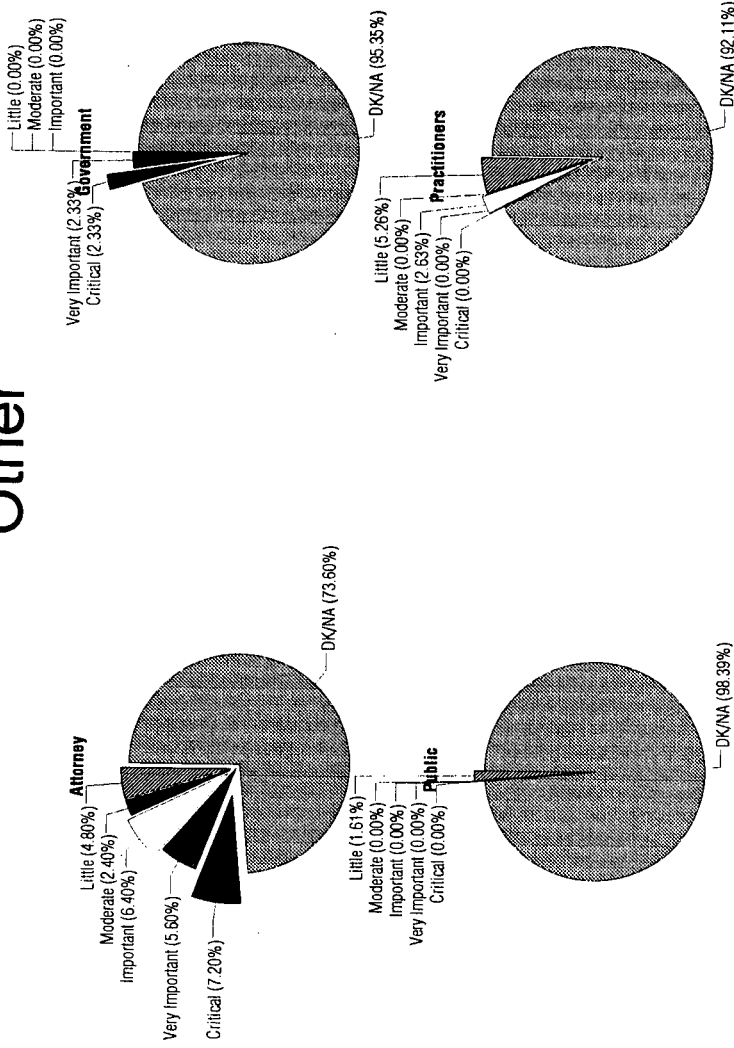


	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Govt. Contracting				
In-House	69%	95%		32%
Contract	31%	0%		25%
DK/NA	0%	5%		43%

The attention paid by public agencies and government officials to government contracting is — one might think — relatively low. An interesting statistic here is the percentage of this type of work that is contracted out by public agencies. Government contracting is almost 60% of the public agency's critical concern, yet nearly one-third of the work is contracted out. This indicates that perhaps resources are not used as effectively as possible.

Areas of Greatest Concern

Other



	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>
Others				
In House	0%	0%		0%
Contract	0%	0%		0%
DK/NA	100%	100%		100%

Topics included under "Others" span the full spectrum of legal activities not dealt with by the specific categories given. The public agencies mention civil rights law as an area of particular concern. Government officials report eminent domain and risk management. Private companies refer to admiralty, hazardous materials, international, logistics, product liability and undercharges law. The largest group represented in this category are attorneys. They mention admiralty, antitrust, affordable housing, cargo insurance, constitutional, corporate, customs, estates, financing, freight loss, labor, and undercharges law as other transport-related concerns.

PROFILE OF EMPLOYERS' LEGAL STAFF

The results for questions 19 and 20 are recorded together on the table below.

- 19. *How many attorneys do you have on staff (in-house)? (Public)(Government)(Private)*
- 20. *Please indicate the level of legal experience recently (in the last five years) hired attorneys have had? (Public)(Government)(Private)*

	<u>PUBLIC</u>	<u>GOV'T</u>	<u>PRIVATE</u>
Attorneys			
1-5 Attorneys	37%	28%	45%
6-10 Attorneys	16%	37%	5%
10+ Attorneys	18%	26%	18%
DK/NA(Includes 0)	27%	9%	32%
None	5%	7%	3%
Experience			
1-2 Years	7%	19%	5%
3-5 Years	31%	44%	20%
6-10 Years	19%	14%	20%
Over 10 Years	19%	9%	27%
DK/NA	19%	7%	25%

On average, the government has more attorneys on staff than the other groups. The mean for private firms is 5.9, for public agencies 10.5, and for government 15.7.

In terms of experience, the numbers show the government as having the least experienced staff; public agencies are in the middle, while private companies have the most experienced people. This could be because graduating students generally start out working in this area for the government before moving on to public agencies and the private sector.

The largest percentage of private company respondents answer in the "Over 10 years" category.

TRUST IN LEGAL EXPERTISE

21. *How often do you follow legal counsel advice to the letter? (Public)(Government)(Private)*

	<u>PUBLIC</u>	<u>GOV'T</u>	<u>PRIVATE</u>
All of the time	15%	14%	23%
Most of the time	58%	33%	52%
Some of the time	11%	9%	13%
DK/NA	16%	44%	16%

Government officials indicate a greater propensity not to follow the legal advice tendered them than do private companies and public agencies. The level of faith and trust displayed by government officials in their legal staff is shockingly low. The high DK/NA response indicates the indifference shown the law and its advocates by our elected representatives and their staffs. These findings also pose important questions about the perceived competence and reliability of attorneys.

PROFILE OF EMPLOYERS

22. *Are you self-insured? (Public)(Private)*

	<u>PUBLIC</u>	<u>PRIVATE</u>
Yes	86%	65%
No	11%	22%
DK/NA	3%	13%

Most public agencies are self-insured while a considerable number of private companies are not. This correlates to the concerns about tort claims expressed by each group.

23. *How large is your fleet? (Public)(Private)*

The range for the public agencies is from 28-9500. The range for private companies is from 4-10,000+.

24. *Type of Vehicles? (Public)(Private)*

	<u>PUBLIC</u>	<u>PRIVATE</u>
Bus	61%	2%
Truck	0%	27%
Freight Car	0%	10%
Airplane	0%	0%
Ship	0%	0%
Pass Rail	3%	0%
Bus and Rail	19%	0%
Passenger and Freight	5%	2%
Two or more types of Freight	0%	13%
DK/NA	11%	47%

This question worked partially for one group surveyed (Public) but not at all for the other (Private). For private companies, such as the airline industry, were not adequately covered. This defect created inaccurate distortions in the "Private" response. Furthermore, the intermodal nature of many private transportation concerns creates combinations that make it difficult to properly evaluate these results.

GEOGRAPHIC COVERAGE

25. a. *What type of practice do you primarily have? (Attorney)*
 b. *What is the geographic domain for your agency? (Government)*

	<u>GOVERNMENT</u>	<u>ATTORNEY</u>
National	5%	37%
State	91%	37%
Regional	0%	0%
Metropolitan	0%	8%
Local	0%	3%
International	2%	0%
National and State	0%	5%
State and Metropolitan	0%	2%
All	2%	0%
DK/NA	0%	8%

The list used for government officials was weighted towards state employees. This is evident in the results. However, the percentages are fairly close to numbers that are accurate nationally. There is a straight split among attorneys who have a national practice and those who have a statewide area of operation.

F. POTENTIAL GROWTH AREAS

26. *Which areas of transportation do you envision as growth areas for attorneys?*
(all)

	<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATT'Y</u>	<u>PRIVATE</u>	<u>SCHOOL</u>
Rail	50%	44%	14%	22%	14%
Public	55%	42%	12%	18%	24%
Tax/Tariff	5%	9%	20%	32%	23%
Regulator	47%	28%	25%	65%	43%
Safety	42%	30%	55%	52%	33%
Tort	48%	58%	30%	8%	18%
Maritime	3%	2%	10%	28%	21%
Freight	7%	12%	29%	22%	10%
Intermodal	47%	65%	53%	55%	18%
Airport	10%	16%	8%	8%	25%
Claims	2%	23%	34%	37%	23%
Bus	39%	54%	44%	37%	6%
Trucking	26%	7%	2%	3%	4%
Aviation	8%	21%	10%	15%	35%

Each group surveyed places a different emphasis on where they feel growth will occur. The five most prominent areas for each group are listed below.

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
PUBLIC	Public	Rail	Tort	Intermodal	Regulatory
GOV'T	Intermodal	Tort	Bus	Rail	Public
LAWYER	Safety	Intermodal	Bus	Claims	Tort
PRIVATE	Regulatory	Intermodal	Safety	Bus	Claims
SCHOOL	Regulatory	Aviation	Safety	Airport	Public

Overall, the law school responses predict far less growth potential than any of the other groups. Their choices of Airport and Aviation as growth areas are not reflected by those who practice.

Private companies forecast very large growth potential in Regulatory, Intermodal, and Safety Law areas. These three areas rank prominently with all of the respondent groups. (Safety averaging 42%, Regulatory 42%, and Intermodal 48%) It is interesting that the group that has the most direct interaction with trucking (private) sees almost no potential for growth in this area.

Attorneys see Safety as the area with the largest potential for growth. As with all the groups, with the exception of law schools, Intermodal is ranked in the top four potential growth areas. The high ranking of bus-related growth is somewhat surprising.

Government officials are extremely concerned with tort-related litigation and claims. It is mentioned by 58% of the respondents as a potential growth area. Only one area is listed more often — Intermodal — at 65%. There is also more interest in Aviation shown here than by any other sample group except the schools. Six subjects are listed by more than 40% of the respondents.

Public agencies generally have answers that are consistent with those of the government officials and the private companies. As with government officials, public agencies list six areas as having growth potential. None of the other groups have more than three areas listed above 40%. Four of the areas are the same as those listed by the government officials, the additional two are Regulatory and Safety, which are also ranked high by private companies. The results indicate that both public agencies and government officials are the least concerned with paying taxes and tariffs.

Other Fields

Respondents list in addition to the given areas a number of other legal specialties: (frequency indicated by the number of responses).

<u>PUBLIC</u>	<u>GOV'T</u>	<u>ATTORNEY</u>	<u>PRIVATE</u>	<u>SCHOOL</u>
Envirn. 4	Envirn. 11	Envirn. 12	Envirn. 2	Envirn. 5
Labor 3	Em. Domain 2	Labor 5	Hazard. Mats. 1	
Civil Rts. 1	Contracts 1	Contracts 3	Logistics 1	
	Computer 1	Haz. Mats. 3	NAFTA 1	
		Commercial 2		
		Bankruptcy 2		
		NAFTA 2		
		Freight 1		
		Brokers 1		
		International 1		
		Civil Rts. 1		
		Customs 1		
		Solid Waste 1		
		Warehousing 1		

The only area mentioned by every test group is Environmental — which was listed by 12% of the total number of respondents and is the only area listed by more than two groups. The second largest listing is Labor.

IX. CONCLUSION

The results of this survey provide empirical proof that there exists a significant disjunction between the practice and law school instruction of transportation and transportation-related law. This disjunction needs to be addressed.

The data provided in this article presents a wealth of information that was hitherto unknown. As the students who implemented the project are finding, there is much that needs to be done to close the gap between the actualities of practice and how transportation and transportation-related areas are taught in American law schools.

In addressing this problem, many questions will need to be answered. It was not the purpose of this study to address those issues or to propose a solution for the disjunction. The survey does, however, provide the necessary empirical basis from which to move forward. Indeed, the results themselves raise in the analysis many of the questions that will need to be addressed as the transportation industry and legal profession move into the twenty-first century.

