

Legal Education on the Move—Law & Transportation at the University of Denver

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I. INTRODUCTION

Nineteen Eighty Seven is a year of transportation anniversaries. It will mark the centennial celebration of establishment of economic regulation over a major American industry and the creation of the nation's first independent regulatory commission—the Interstate Commerce Commission [ICC]. It is the 50th birthday of the nation's largest bar association devoted to transportation—the Transportation Lawyers Association [TLA]. It is the 20th anniversary of the TLA-University of Denver co-sponsorship of the premiere continuing legal education program for transportation attorneys and practitioners—the Transportation Law Institute [TLI]. And it marks the publication of the fifteenth volume of the most successful and comprehensive legal periodical in this field — the *Transportation Law Journal* [TLJ]. Hence, this seems a particularly appropriate moment to reflect on the past and pontificate on the future of legal education in transportation.

The Transportation Law Program at the University of Denver [D.U.]

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College of Law began in 1967 as a continuing legal education program for attorneys and practitioners—the Transportation Law Institute. Since its inception, the Institute has been jointly sponsored by the University of Denver and the Transportation Lawyers Association (TLA was formerly the Motor Carrier Lawyers Association). Ours has been a rich and rewarding relationship over the ensuing years which has matured into one of mutual admiration and common benefit in law and education.

A decade ago, D.U.'s Transportation Law Program began to blossom with the injection of a series of annual economic contributions by TLA. This made possible the creation of a new faculty position devoted to the discipline of Transportation Law. The incumbent in that chair also serves as Faculty Editor of the *Transportation Law Journal*. In 1976, D.U. also assumed responsibility for publication of that periodical, which it shares with TLA's Transportation Law Journal Board of Governors. With the current issue, the *Transportation Law Journal* publishes its fifteenth volume — a decade-and-a-half of leading scholarship in this important and dynamic field. Let us examine where we have been, and where we appear to be going.

II. METAMORPHOSIS IN TRANSPORTATION LAW

Transportation is the foundation infrastructure industry upon which the rest of commerce is built. It therefore serves as among the most important industries in any nation's economy. In 1887, it became the first industry to be regulated. And by the mid-1970s, it became the first to enjoy comprehensive regulatory reform.

Few areas of federal law have changed as rapidly and fundamentally as has transportation in the contemporary era. During the past decade, Congress has promulgated comprehensive regulatory reform legislation for each mode of transportation. These bills include:

- The Railroad Revitalization and Regulatory Reform Act of 1976
- The Air Cargo Deregulation Act of 1977
- The Airline Deregulation Act of 1978
- The International Transportation Air Competition Act of 1979
- The Motor Carrier Act of 1980
- The Staggers Rail Act of 1980
- The Household Goods Transportation Act of 1980
- The Bus Regulatory Reform Act of 1982
- The Shipping Act of 1984
- The Civil Aeronautics Board Sunset Act of 1984

Without a question, the regulatory and legislative developments of the past decade have been extraordinary. They have struck at the very core of the industry and its relationship with government. Transportation may well be the most dynamic area in all of administrative law.

During this period, the Civil Aeronautics Board was "sunset," while its remaining responsibilities over the airline industry were transferred to the U.S. Department of Transportation. The Interstate Commerce Commission, the nation's first independent regulatory agency, with comprehensive jurisdiction over rail and motor carriers, will soon turn 100. But it has been saddled with appointees committed to its destruction — the three marketeers appointed by President Carter (*i.e.*, Commissioners Alexis, Gaskins and Trantum) and the three marketeers appointed by President Reagan (*i.e.*, Commissioners Andre, Gradison, and Sterrett). That Grand Old Lady at 12th & Constitution Avenue in Washington, D.C., has some difficult years ahead of her, as she enters her second century. Some physicians prescribe euthanasia for what they perceive to be a senile old woman. Others hope that she will catch her second wind and enter her second century with the strength of a hurricane.

The law has evolved rapidly and radically during this era, and economic regulation has been significantly constricted. This has, of course, enhanced the need for education in this field so as to understand the changes upon us. And reform has had a concomitant effect on law students. The competitive advantage of decades of regulatory experience is not as valuable as it once was. Our graduating law students begin the practice of transportation law on a nearly clean slate.

III. THE CURRICULUM

The heart of any educational program is its curriculum. The University of Denver College of Law offers its students the opportunity to focus their education in one of several areas of specialization, including advocacy skills, business planning, international law, natural resources, tax and transportation. All J.D. candidates are required first to fulfill the educational obligations of the Required Curriculum, which consumes more than half of a student's legal education at our law school. Included within the Required Curriculum are courses which serve as a foundation for that which follows, including the electives they may take in the various fields of government regulation. Among these is Administrative Law, a required course which offers a comprehensive overview of the practice and procedure of government agencies, with a particular emphasis on the ins and outs of the Administrative Procedure Act. Also of manifest importance is the required course of Constitutional Law.

The University of Denver offers a comprehensive academic program in Transportation Law with a wide spectrum of introductory and advanced courses and seminars, as well as independent study and internship opportunities. These attempt to provide educational exposure to the legal, regulatory, economic and political developments in transportation.

The curriculum of the Transportation Law Program begins with the basic course in Transportation Law. This course offers the student an overview of all aspects of economic regulation (*i.e.*, entry, exit, rates and business practices) of each of the several domestic transport modes (*i.e.*, air, motor, rail and water carriers, freight forwarders and brokers). It also provides students with a survey of liability issues surrounding loss and damage to freight in transit, labor law issues in transportation, and the government's role in providing transport services (*e.g.*, Amtrak, Conrail and urban mass transit).

Beyond the basic course in Transportation Law, students are free to take electives in Admiralty, Antitrust, Aviation Law, Public Utilities Law, Space Law and Regulated Industries, as well as seminars in International Transportation Law. It is anticipated that a course in Law & Economics will be added to the curriculum during the forthcoming academic year.

Courses in Space Law and Regulated Industries have only recently been added to the D.U. curriculum. The adoption of the former reflects the fact that transportation is on the cutting edge of technology and provides an important role in facilitating global communications. As the resources of space are commercially developed, transportation will continue to play an essential role.

Regulated Industries is a course which offers the student a comprehensive overview of the major American industries in which state and federal governments have played a regulatory role—electric utilities (hydroelectric, coal-fired and nuclear), oil and gas, broadcast communications (radio, TV and cable), telecommunications, and transportation (air, rail and motor). It first attempts to introduce students to the common threads of economic regulation running through all of these industries. Upon this foundation, the substantive law of each is explored.

Students in the Transportation Law Program have the opportunity to participate in externships in federal regulatory agencies or major transportation businesses. For example, one D.U. law student recently spent an academic quarter performing legal work at the Federal Aviation Administration of the U.S. Department of Transportation in Washington, D.C. The University of Denver recognizes the educational value of this "hands-on" experience, and extends academic credit for it.

Students at the University of Denver also have the opportunity to develop their legal research and writing skills by participating as members of the Staff and Editorial Board of the nation's leading periodical in its field—the *Transportation Law Journal*. Ordinarily, students join the TLJ during their second year of law school. They perform one academic quarter as a candidate, during which they are given an examination which tests their familiarity with the "blue book" system of law review citation. They are also given a series of traditional law journal staff assignments,

including "spading and critiquing" a manuscript submitted for publication; and "citing and sourcing" or "blue booking" footnotes. Upon successful completion of these tasks, at the end of the candidacy quarter, the student is elected to Staff.

Staff members are eligible to earn academic credit for their work on the *Journal*. They are expected to contribute 30 hours of work for each hour of academic credit earned. During their final year of law studies at the University of Denver, students may elect to serve as an Editor on the periodical. They must first submit a piece of scholarly research of publishable quality to the Faculty Editor of the *Journal*. If it is approved, the existing editors decide who shall be elected to fill vacancies on the Editorial Board. Editors are eligible to receive up to three hours of academic credit per quarter. Again, students are expected to put in 30 hours of work for each hour of academic credit earned. An overall ceiling of 15 hours of credit is imposed on *Journal* activities.

The D.U. law students who serve as editors and staff members of the TLJ review and edit a wide range of scholarly literary products submitted by attorneys, economists and government officials. They also have an opportunity to publish their own literary contributions as Notes, Comments, or Recent Decisions. The *Journal* works closely with all student authors in an effort to develop legal research and writing skills. Since the legal profession is, predominantly, a literary profession, the development of such skills is absolutely essential to the successful practice of law.

IV. THE TRANSPORTATION LAW JOURNAL

The *Transportation Law Journal* is the only comprehensive law school publication in the area of transportation law. It is a major source of information for the practicing bar as well as for scholars. As such, it strives to provide its national readership with the highest caliber of writing.

The substantive focus which defines the *Journal's* scope is diverse and includes all areas of transportation law. The following is a partial list of topics which have been dealt with in the past: land-use planning, environmental law, labor law, commercial law, corporate law, civil rights, anti-trust and trade regulation, air, motor and rail carrier regulation, airport noise regulation, highway planning, auto emissions, the SST controversy, coal slurry pipelines, shipping and deepwater ports, the transportation of hazardous materials, and environmental regulation.

Over the years, the TLJ has been a lively forum for the debate over contemporary legal, political and economic issues confronting the industry. Major symposium issues have addressed the following topics:

International and Intermodal Transportation—Vol. 12(1)

Urban Mass Transportation—Vol. 12(2)

Transportation Regulation: Past, Present and Future—Vol. 13(1)

Transportation Deregulation—Vol. 13(2)

Intrastate Regulation—Vol. 14(2)

The *Journal* is planning a symposium dedicated to the Centennial Anniversary of the Interstate Commerce Commission for volume 16, entitled "The Interstate Commerce Commission: The First Hundred Years of Economic Regulation."

Beyond these significant symposiums, the *Journal* has served as a soap box from which individuals have debated the virtues and sins of regulation and deregulation. On two occasions, vigorous debates on the wisdom of motor carrier ratemaking antitrust immunity were conducted between Washington transportation consultant Jesse J. Friedman and AEI Resident Scholar James C. Miller III, in volumes 10(1) and 11(2) of the *Journal*. Mr. Miller went on to become President Reagan's FTC Chairman, and David Stockman's successor as Director of the Office of Management and Budget. And one will recall the infamous debate between Professors Dempsey and Hardaway in Volumes 13(2) and 14(1) of the TLJ—the one in which Hardaway got it all wrong and Dempsey got it all right.

The *Transportation Law Journal* has become a significant means of disseminating information, an invaluable research tool for transportation lawyers and practitioners, and an important forum for the public policy debate over regulation and deregulation. It has an international audience of subscribers around the world — from Canada to Yugoslavia, from Norway to Australia, from New Guinea to Japan, and from Tanzania to Thailand. Today, more than 1,000 individuals, law firms, government agencies, and libraries subscribe to the TLJ. All members of the Transportation Lawyers Association receive the periodical as one of the perquisites of their membership. Of the legal periodicals published by the University of Denver, the *Transportation Law Journal* is the only one reproduced in the Westlaw computer system.

V. PRIZES, AWARDS AND SCHOLARSHIPS

In an effort to encourage interest in U.S. and Canadian law schools in the field of Transportation Law, the Film, Air and Package Carriers Conference of the American Trucking Associations established a \$1,000 Transportation Law Essay Award Contest in memory of Harold Shertz of Philadelphia, for his many years of distinguished service to the transportation industry and the legal profession. Students of any Canadian or U.S. law school are eligible to participate. Winning entries are designated by the Transportation Lawyers Association TLJ Board of Governors and are published in the *Transportation Law Journal*.

Two scholarships established by the Motor Carrier Lawyers Foundation are available to students in the Transportation Law Program at the

University of Denver. One is named in honor of Marion F. Jones of Denver for his many years of distinguished practice in the legal profession. The second is named in honor of the Transportation Lawyers Association. Both are awarded on the basis of high academic standing, economic need, and participation in the activities of the Transportation Law Program, particularly the *Transportation Law Journal*.

VI. THE TRANSPORTATION LAW INSTITUTE

The concept of a continuing legal education program for attorneys specializing in transportation originated with members of the TLA. They initially envisioned an intensive educational experience for attorneys and practitioners in the field of motor carrier economic regulation by the Interstate Commerce Commission. The University of Denver, as an entity with broad experience in continuing legal education, was approached as a potential cosponsor. This union has since produced a plethora of excellent educational programs.

Prior to 1980, the subject matter emphasis of the Transportation Law Institute rotated on an annual basis, usually devoting an entire program to the issue of motor carrier entry, ratemaking, finance transactions or liability for loss and damage. With the challenges posed by deregulation in the contemporary era, the educational program was expended to include the emerging legal problems in the fields of bankruptcy, labor law, antitrust, environmental, and safety regulation, as well as intermodal and rail transportation issues.

The situs of the Transportation Law Institute has heretofore been in Denver or the summer Rocky Mountain resorts of Colorado and Utah. With the merging of TLI and TLA annual educational programs, the Transportation Law Institute will henceforth be held at locations throughout the United States. The 20th Annual Transportation Law Institute will be held in Scottsdale, Arizona, on April 22-25, 1987. For the first time, its continuing legal educational functions will be combined with those of the annual meeting of the Transportation Lawyers Association.

VII. THE PROGNOSIS FOR LEGAL EDUCATION IN TRANSPORTATION LAW

In the short run, educational activities in transportation must continue to broaden and diversify the exposure of students toward emerging legal issues in the field. As motor carrier operating authority regulation by the ICC constricts, the focus must be toward increased exposure to emerging ICC ratemaking and antitrust regulatory issues, the role of other regulatory agencies in areas such as safety and environmental law, the role of the judiciary in enforcing and administering antitrust and bankruptcy law, and toward a more widely diversified interest in intermodal and international

transportation, as well as the full spectrum of transport modes — air, rail, motor, pipeline and water, brokers and freight forwarders. Similarly, the role of the U.S. Department of Transportation in such areas as safety and hazardous materials transport regulation, highway construction, and urban mass transit facilitation must be given more attention.

In the long run, the education learned in transportation may be useful in practicing law in the other regulated industries. For example, basic ratemaking principles are remarkably similar for motor, rail and pipeline carriers, electric utilities and telecommunications companies. The Public Utilities Commissions of most states have regulatory jurisdiction over them all. Entry regulation has common threads running throughout transportation and broadcast communications. This is true, because transportation was the first industry to be comprehensively regulated. Subsequent federal and state efforts to engage in economic regulation rested upon the foundations of the Interstate Commerce Act and judicial interpretations thereof. Ultimately, we may see the emergence of regulated industries attorneys competent to perform all these legal functions on behalf of a variety of clients requiring comprehensive regulatory expertise.

Recently, our law school has moved into the new 140,000 square-foot Lowell Thomas Law Center on a 33-acre campus near Stapleton International Airport. Denver is among the nation's major transportation hubs for air, motor and rail carriers. It is therefore an ideal location for a program which focuses on transportation law. It is hoped that the University of Denver will continue to make the educational contribution to this rapidly evolving, dynamic field that it richly deserves.