



VIP Profile: Thomas P. Dale

Executive Vice President—General Counsel
Rolls-Royce North America Inc.



Background

Tom Dale is the executive vice president—general counsel for Rolls-Royce North America Inc. In this role, he oversees

all legal matters affecting Rolls-Royce business and operations in the United States and Canada, including management of the company's legal team and secretariat, ethics, international trade compliance, defense security, and intellectual property functions. He also serves as secretary to the Rolls-Royce North America Holdings Inc. Board of Directors and Government Security Committee.

He is based at the company's headquarters in Reston, Va.

Dale is a member of the bar in New

York, Massachusetts, Virginia, and Pennsylvania, and has been admitted to practice before the U.S. Supreme Court. He is also a member of the American Bar Association (ABA) and the American Corporate Counsel Association, where he has been recognized for excellence in corporate practice. Dale currently serves on the Governing Committee of the ABA Forum on Air & Space Law.

TransLaw: Tell us a little bit about your educational background.

Dale: I received an A.B. in history from Princeton University and a J.D. from Boston College Law School.

Since moving to an in-house role, I have taken a number of business management courses and received a certificate in management through the Executive Education Program at the Darden Graduate School of Business Administration.

TransLaw: Rolls-Royce is a respected company throughout the world. Tell us about the type of work the company does so we can gain a basic understanding of the types of projects your legal team may work on.

Dale: Rolls-Royce, a world-leading provider of power systems and services for use on land, at sea, and in the air, has established strong positions in four global markets: civil aerospace, defense aerospace, marine, and energy. In 2008, annual sales were around

\$14 billion, of which 52 percent came from services revenues. The firm and announced order book is roughly \$83 bil-

lion, of which aftermarket services represent 26 percent. This strong order book provides visibility of future levels of activity.

TransLaw: What type of customers does Rolls-Royce serve?

Dale: The company has a broad customer base in nearly 120 countries that includes more than 600 airlines, 4,000 corporate and utility aircraft and helicopter operators, 160 armed forces, more than 2,000 marine customers (including 70 navies), and energy customers.

TransLaw: When did you join Rolls-

Chair's Corner

Denise Krepp

As summer wanes and parents (but not necessarily their children) look forward to the first day of school, Transportation and Transportation Security Law Section members are hard at work. The section hosted a successful panel on non-aviation mode security initiatives at the Transportation Security Administration in June. In September, we will be hosting our annual Lawyer of the Year Award Banquet, and lastly, we are looking to host one more panel discussion before the end of the year so stay tuned.

Congratulations are in order for one of our long-time members, David Matsuda. David was recently selected to be the new deputy administrator of the Maritime Administration. David, like many members, worked as an attorney for the Department of Transportation. From 1998-2002, he worked as an attorney with the safety law division of the Federal Railroad Administration. He subsequently left in 2002 to become the Georgetown University Government Affairs Institute fellow on the Senate Committee on Commerce, Science, and Transportation.

Finally, don't forget about the upcoming FBA Annual Meeting and Convention in Oklahoma City! More details can be found online at www.fedbar.org/OK09_home.html. ♦

Royce? What has changed since you joined the company?

Dale: I joined Rolls-Royce as the company's general counsel and company secretary for the region in 1990. At that time, there were no significant manufacturing or engineering locations in the United States, and fewer than 300

Who's Who in the DOT

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Editor's Letter

Hector O. Huezo

Welcome to the Summer 2009 edition of TransLaw! First, I want to thank the board of the Federal Bar Association's Transportation and Transportation Security Law Section for their continued support and encouragement. The board's commitment to TransLaw and the FBA are exemplary.

In this issue, Philip Sunderland, vice president and general counsel for the Metropolitan Washington Airports Authority (MWAA), writes about airport-imposed fees on non-airport users for non-airport services. Sunderland details the manner in which the Commonwealth of Virginia courts have addressed the "fee v. tax" question—i.e., whether what is represented as a "fee" is, instead, a "tax" that the assessing entity may not have the power to impose. The issue is quite attractive and timely since the Commonwealth of Virginia transferred the authority and responsibility to operate and maintain the Dulles Toll Road, including the ability to set and collect tolls, to the MWAA last year.

We thank Tom Dale, executive vice president—general counsel for Rolls Royce-North America Inc., for allowing TransLaw to pry into his professional life and share it with our readers. In his VIP Profile, Dale tells us about his professional and educational background, as well as Rolls-Royce's accomplishments since his arrival in 1990. Dale also shared with TransLaw that his legal team has been named as an "Employer of Choice" by the Minority Corporate Counsel Association.

Finally, Amy Cassidy gives us a summary of our most recent event in the Lawyers' Lunch Series: Update on TSA's Non-Aviation Modes Security Initiatives. The panel participants gave the audience an overview of security initiatives in non-aviation modes and TSA's efforts to keep up with previous and impending statutory requirements to keep surface transportation safer and more secure.

As always, we encourage you to help us find new section members, TransLaw articles, and ideas for VIP profiles. By the way, the FBA membership application appears on the last pages of this issue. If you are not a member, please consider becoming one. If you are a member, please consider sending this issue—and the application—to your professional acquaintances and colleagues and encourage them to join. Similarly, if you or someone you know is looking to publish a transportation-related article or if you have an idea for other items to include, please let me know at hector.huezo@dot.gov.

We hope you enjoy this issue of TransLaw, and look forward to your involvement with the Federal Bar Association's Transportation and Transportation Security Law Section. ❖



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employees. Today, the picture is quite different. In North America, Rolls-Royce employs more than 8,000 people in 66 locations throughout the United States and Canada. North America is also home to several of the company's global businesses, including energy (Mount Vernon, Ohio), helicopters, and defense North America (both in Indianapolis, Ind.).

TransLaw: What did you do before joining Rolls-Royce?

Dale: Prior to joining Rolls-Royce, I was a lawyer in private practice with firms in Philadelphia, New York, and Boston, specializing in mergers and acquisitions, financings, and other corporate transactions.

TransLaw: Are most of Rolls-Royce's products made inside the United States?

Dale: Rolls-Royce operations in North America are critical to the success of the company. The company's largest research, engineering, and manufacturing facility outside the United Kingdom is located in Indianapolis.

Today, more Rolls-Royce engines are built in the United States than anywhere else in the world.

TransLaw: What are some of the company's current projects in the United States?

Dale: I am pleased that Rolls-Royce continues to invest in North America. This year, for example, the company is slated to begin construction at Crosspointe, a new aerospace manufacturing facility in Prince George County, Va., which will potentially employ up to 500 people. Last year, the company opened a new aero engine testing facility at NASA's John C. Stennis Space Center in Mississippi.

TransLaw: What are some of the legal or regulatory challenges your company—and the industry—is likely to face in the future?

Dale: I believe that companies like Rolls-Royce are likely to face increasing regulatory and legislative requirements relating to the environment in the coming years. Rolls-Royce is already committed to improving its

environmental profile, and to that end, the company continues to invest in R&D and technology. Last year, for instance, Rolls-Royce spent over \$1.2 billion on research and development, two-thirds of which was intended to further improve the environmental aspects of our products.

TransLaw: Thank you for taking the time to talk to *TransLaw*. Is there anything else you'd like to share with our readers?

Dale: Yes. As Rolls-Royce expands its global presence, it is also making significant progress in terms of workforce diversity. In fact, our North American legal team was named an "Employer of Choice" by the Minority Corporate Counsel Association. Like most Rolls-Royce employees, I am very proud of the company's success and its progress on matters like the environment and diversity. Thank you for the opportunity to address your readers and to give them a better understanding of our company and our legal team. ❖

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Panel Discussion on Transportation Security Involving Non-Aviation Modes

Amy Cassidy

On June 16, 2009, the Transportation and Transportation Security Law Section of the FBA sponsored a panel—hosted by the Transportation Security Administration (TSA)—to discuss transportation security in the non-aviation modes. John Wasowicz, TSA legislative counsel, moderated the panel comprised of Howard Goldman, senior counselor to the acting TSA administrator; Sarah Tauber, TSA assistant chief counsel for Civil Enforcement/Multimodal Operations; Michael Lovelace, attorney-advisor, TSA Criminal Enforcement; Melissa Porter, Senate Committee on Commerce, Science, and Transportation; and Denise Krepp, senior counsel, House Committee on Homeland Security. Panelists updated attendees on surface transportation security efforts and initiatives, focusing on current challenges, future plans, and Congressional priorities.

Howard Goldman provided an overview—from the inception of TSA to the present—of security in the non-aviation modes, noting the agency's limited organic staff and the initial lack of direction and funding for surface transportation security. He went on to say that TSA has been, however, ramping up new programs intended to tackle the different security challenges for surface transportation—which is both larger in scale and more open than aviation transportation. He also explained TSA's ongoing efforts to comply with the numerous requirements of P.L. 110-53—Implementing the Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Act), which demands short deadline rulemakings and increased agency reporting.

Sarah Tauber spoke about TSA's ongoing efforts to enforce compliance

with security initiatives in the surface transportation modes. While she acknowledged that Congress provided new teeth to the agency with the 9/11 Commission Act, she noted that regulations are necessary for true enforcement and that those regulations are still in progress. Presently, TSA is achieving its enhanced security goals by disseminating best practices and seeking compliance agreements from stakeholders.

Denise Krepp emphasized the House's strong and continuing interest in the completion of the Transportation Worker Identification Card (TWIC) program, indicating that members and staff are growing impatient for the introduction of card readers. Currently, port workers are required to show their TWICs at port entrances, but the cards cannot be electronically read to ascertain authenticity. She stated that fraudulent TWIC cards have been reported and readers must be deployed immediately to secure U.S. ports against unauthorized and fraudulent entry. Additionally, she relayed Congress's ongoing frustration with extended wait times for port workers seeking to obtain TWICs. She explained that the backlog is preventing employees from working, which creates a difficult situation in the current climate of economic challenges and unemployment. Finally, she affirmed the House's renewed focus on security in surface transportation and indicated that Congress is monitoring how TSA will utilize the powers provided in the 9/11 Commission Act.

Melissa Porter spoke about organizational changes in the Senate Committee on Commerce, Science, and Transportation and indicated that staff is adjusting to the new leadership priorities of committee chair John D. Rockefeller and rank-

ing member Kay Bailey Hutchison. These priorities include port security and cyber security—issues on which bills are either in progress or have been introduced. Porter also reiterated Congress's interest in 9/11

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Commission Act implementation and added that her subcommittee is pleased with the increased interest it has observed regarding surface

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Airport-Imposed Fees on Non-Airport Uses While Off-Airport and For Non-Airport Services

Philip Sunderland

Introduction

Airport revenue diversion principles apply to the types and level of fees that airports may impose on users of airport facilities. Various statutes and court decisions apply to the types and level of fees and taxes that non-airport governmental bodies may impose on users of airport facilities.

In recent litigation challenging the transfer of operational control over a Northern Virginia toll road from the Commonwealth of Virginia to the Metropolitan Washington Airports Authority (MWAA),¹ a different fee/tax issue was presented: whether the assessment by an airport of fees off airport on non-airport users—specifically, the assessment of tolls on users of the toll road—is unlawful because the toll constitutes a tax, which the

¹On November 1, 2008, the Commonwealth of Virginia transferred the authority and responsibility to operate and maintain the Dulles Toll Road (DTR), including the ability to set and collect tolls, to MWAA for a period of 50 years. The DTR runs from the capital beltway along what is known as the Dulles Corridor out to Dulles Airport. In return, MWAA has assumed responsibility to finance and construct a 23-mile extension of the Washington, D.C., regional Metrorail system. The new Metrorail line will run, in part, parallel to the DTR (in the median of the Dulles Access Highway which is controlled by MWAA under its lease from the federal government), and will bring rail service to the Dulles Corridor, including to and beyond Dulles Airport. A substantial part of the Metrorail construction cost will be funded with toll revenue from the DTR. Thus, critical to the success of this overall transaction is MWAA's ability to set the level of tolls to be charged users of the DTR.

airport assessing body lacks the power to levy.

Presented below is a summary of the manner in which Virginia courts have addressed the “fee v. tax” question—i.e., whether what is represented as a “fee” (or, sometimes, a “user fee,” “service fee” or “utility fee”) is, instead, a “tax” which the assessing entity is without power to impose.²

Entities Authorized to Levy “Taxes”

In *Marshall v. Northern Virginia Transportation Authority*, the Virginia Supreme Court struck down the lynchpin of Gov. Tim Kaine's comprehensive transportation program for Northern Virginia.³ This program, enacted by the Virginia General Assembly in 2007, established the Northern Virginia Transportation Authority (NVTA), authorized the NVTA to plan for transportation improvements in the region, and empowered it to implement the plan. The NVTA was also authorized to issue tax exempt bonds to fund the infrastructure improvements identified in its plan and to levy a wide range of taxes, applicable in Northern Virginia, to pay the debt service on those bonds.

NVTA is governed by a Board of Directors (the NVTA Board) comprised of elected officials from the local governments in the region. In 2007, the NVTA Board, among other things, voted for NVTA to issue bonds and to levy a series of taxes across the region. A bond validation suit

²This article addresses only Virginia law. It is intended to provide an example of one state's approach to the fee/tax issue, and the standards and criteria that have been developed to distinguish a fee from a tax.

³See *Marshall v. Northern Virginia Transportation Authority*, 657 S.E.2d 71 (Va. 2008).

followed, which culminated in the Virginia Supreme Court's ruling in *Marshall*.

The Virginia Supreme Court readily invalidated the NVTA bonds, holding that the Virginia Constitution allows taxes in Virginia to be levied only by bodies comprised of elected officials. Since the members of the NVTA Board had not been elected to that body, the legislature could not, the Court concluded, constitutionally give the NVTA Board, or the NVTA, the power to impose taxes.

Fees versus Taxes: Distinguishing Principles

A. The MWAA Dulles Toll Road Litigation

In the litigation involving the transfer of the Dulles Toll Road to the MWAA, plaintiffs asserted that the fee that the MWAA will impose on users of the toll road is, as a matter of law, a tax because the level of the fee—or toll—would be substantially in excess of the level needed to produce sufficient revenue to operate, maintain and improve the toll road only. Rather than producing just enough revenue to keep the toll road functioning, plaintiffs claimed, a significant portion of the assessed toll and of the corresponding revenues would be used to finance infrastructure improvements (specifically, the new Metrorail line along the Dulles Corridor) having nothing to do with the toll road.

This characteristic of the toll, plaintiffs argued, meant that the toll would, in effect, produce “general operating revenue,” and this would transform the toll from a genuine user “fee” into a “tax.” And, they further argued,

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since the MWAA Board of Directors is not comprised of elected officials, the MWAA, just like the NVTAs, lacks the power to assess this toll “tax.”⁴

B. The Virginia Regime: “Taxes,” “Regulatory Fees” and “User Fees”

Virginia law places the wide range of government-imposed “charges” into three categories, each with its own characteristics and boundaries. One is a “tax” which, under the NVTAs decision, may only be imposed by elected officials. Another is a “regulatory fee” which may be imposed by a governmental body pursuant to its “police power.” The third is a “user fee” which may be imposed by a governmental body upon users of certain government-provided services or other benefits.

The characteristics and criteria that Virginia courts have developed to distinguish these three forms of governmental charges are summarized below.

1. Taxes

A “tax” is characterized by two primary factors: (a) its payment is mandated by a governmental entity, and the weight or force of government is available to enforce its payment which can include criminal and civil penalty sanctions; and (b) the revenue the tax produces is used to fund the general operations of government or, in the case of a dedicated tax, certain specifically identified operations (e.g., open space, affordable housing, street/roadway improvements).

In Westbrook Inc. v. Town of Falls

⁴The trial court rejected plaintiffs’ position, concluding that the toll to be assessed by the MWAA would not be a tax. The court stated this conclusion in a final order, which was not accompanied by an opinion. Thus, the reasoning underlying the court’s conclusion is unknown. Plaintiffs elected not to pursue an appeal to the Virginia Supreme Court.

Church, for instance, the court found that “[a] tax is an enforced contribution imposed by the government for governmental purposes or public needs. It is not founded upon contract or agreement;” that is, “[a] tax is a forced charge ... ; it operates in invitum, and is in no way dependent upon the will or contractual assent ... of the person taxed.”⁵ Similarly, the court in *Marshall* stated that it has “consistently held that when the primary purpose of an enactment is to raise revenue, the enactment will be considered a tax, regardless of the name attached to it.”⁶

2. Regulatory Fees

A “regulatory fee” is characterized by two primary factors: (a) its payment is required by a governmental body in order to obtain a mandated regulatory approval or a mandated government-provided service, where the approval or service is part of a program or activity that the governmental body has undertaken pursuant to its “police power”; and (b) the fee does not exceed a level that is reasonably necessary to fund the costs of that “police power” program or activity.

In *Charlottesville v. Marks’ Show*, the court stated that “[w]here the imposition is laid upon persons or property under a general tax ordinance, and the proceeds are paid into the general treasury, and no part thereof is devoted to the expenses incident to carrying out the provisions of the ordinance, the conclusion is that the exaction is for revenue purposes alone” and it is a tax.⁷ However, “[i]f regulation is the primary purpose [of an enactment], the mere fact that incidentally a revenue is obtained does not make the imposition a tax. Where the fee is imposed for the purpose of regulation and the

⁵*Westbrook, Inc. v. Town of Falls Church*, 39 S.E.2d 277, 280 (Va. 1946).

⁶*Marshall* at 77.

⁷*Charlottesville v. Marks’ Show*, 18 S.E.2d 890, 895 (Va. 1942).

[enactment] requires compliance with certain conditions in addition to the payment of the prescribed sum, such sum is a license proper, imposed by virtue of the police power;”⁸ and, in that case, “[t]he exacted charge must bear some reasonable relation to the additional burdens imposed upon the [government] and the necessary expenses involved in the police supervision.”⁹

In Bott v. Hampton Roads

Sanitary Commission, the

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⁸*Id.* at 894.

⁹*Id.* at 895.

purposes.”¹⁰ In *McMahon v. City of Virginia Beach*, the court stated that a fee for connecting to a city water system, where the connection was required of property owners, is not a tax, because it was not “adopted solely as a revenue measure” since “the charges [fees] would not exceed the actual cost to the city of installing the waterline in the streets.”¹¹

When addressing the level of a valid “regulatory fee,” the courts have analyzed the correlation between the benefit of the governmental program or service, the costs of delivering the program or service, and the amount of revenues produced by the fee. In *Mountain View Limited Partnership v. City of Clifton Forge*, the court found that a fee for city refuse collection services, which property owners were required to utilize, was not a “means of generating revenue to pay for the cost of performing other [governmental] functions” and was not, therefore, an “impermissible tax;”¹² it was a valid fee, not a tax, because there was “a reasonable correlation between the benefit conferred [by the refuse collection system] and the cost exacted by the ordinance,” and the level of the fee was reasonably set to cover the system’s current operating costs and projected future costs related to the closing of the local landfill.”¹³

Similarly, in *Tidewater Association of Homebuilders Inc. v. City of Virginia Beach*, the court concluded that a fee for connecting to the city water system, which developers of new buildings were required to do, was not a tax since the required connections were a valid “exercise of [the city’s] police power,” the fee “did not exceed the city’s actual cost in providing the

service, and there was a reasonable correlation between the benefits of the service provided and the burdens of the fee paid. ...”¹⁴

3. User Fees

A “user fee” is characterized by two primary factors: (a) its payment is required by a governmental body in order to obtain a service or other benefit that the body is offering (but not requiring); and (b) payment of the fee, along with receipt of the offered benefit, is entirely voluntary on the part of the fee payor.

Thus, a user fee is not part of a program of governmental “police power” regulation, where a fee is paid to secure a required government approval; nor is it part of a program of mandated governmental services, where a fee is paid to obtain services that a governmental entity—operating pursuant to its “police power”—requires members of the public to obtain. Rather, with a user fee, a governmental entity is offering a service or other benefit, and individuals are perfectly free to decline the offer and, thereby, avoid the fee.

Conclusion: Tolls are User Fees

Tolls assessed for the use of a toll road are not a “tax” or “regulatory fee,” but a “user fee” since use of the toll facility and payment of the toll are entirely voluntary. There is no governmental requirement that an individual use a toll road and pay the fee. Rather, the toll road is an “offered” service which individuals may, in their discretion, use or decline to use; payment of the toll is required only as a result of a choice to accept the offer and use the facility.¹⁵ As a result, it is

irrelevant that the revenue produced by a toll is larger than the revenue that is needed to operate, maintain and improve the toll facility. While the size of the toll is limited, among other things, by “local politics” and the elasticity of demand for the toll road service, it is not restricted by the requirement applicable to “regulatory fees”—i.e. that the revenue produced by the fee be no larger than that which is needed to fund the governmental program or activity in question. ❖

A version of this article was presented at the American Bar Association (ABA) Forum on Air & Space Law (2009 Update Conference: Uncertain Times for an Uneasy Industry) on January 28, 2009.

paying the fee in a manner not shared by other members of society; and they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge” (cites omitted); *Gargano v. Lee County Board of Commissioners*, 921 So.2d 661 (Fla. Ct. App., 2006) (bridge toll is not a tax because it is a “charge[] for services that one can avoid. ... The county cannot compel her to use the bridge or pay the fee”); *Masters v. Duval County*, 154 So. 172, 174-75 (Fla. 1934) (bridge tolls are not taxes “even though tolls already collected [are] sufficient to pay for the construction of the [facility and] ... the proceeds [of the current toll are used] for county purposes;” and “the tolls may be used for any statutory purpose not forbidden by organic law. The Constitution does not require the expenses of ... government to be paid only by ad valorem or other taxes;” *Ruler v. York County*, 139 A. 136, 139 (Pa. 1927) (“[T]olls are [not] taxes in Pennsylvania. They have never been so regarded here. The fact that the tolls when collected may be used in relief of taxation no more makes them a tax than would a donation made to the counties and so used be such.”

¹⁰*Bott v. Hampton Roads Sanitary Commission*, 58 S.E.2d 306, 310 (Va. 1950).

¹¹*McMahon v. City of Virginia Beach*, 267 S.E.2d 130, 134 (Va. 1980).

¹²*Mountain View Limited Partnership v. City of Clifton Forge*, 504 S.E.2d 371, 374 (Va. 1998).

¹³*Id.* at 376.

¹⁴*Tidewater Association of Homebuilders Inc. v. City of Virginia Beach*, 400 S.E.2d 523, 527 (Va. 1991).

¹⁵*See, State v. City of Port Orange*, 650 So.2d 1, 3 (Fla. 1994) (“User fees ... share common traits that distinguish them from taxes: they are charged in exchange for a particular governmental service which benefits the party

DISCOVER Oklahoma City

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WEDNESDAY, SEPT. 9

2:00–5:00 p.m. Registration Desk Open

THURSDAY, SEPT. 10

6:30 a.m.–5:00 p.m. Registration Desk Open

8:00 a.m.–5:00 p.m. Exhibits Open

**8:00–9:15 a.m. Welcoming Remarks by Oklahoma City Mayor Mick Cornett; Plenary
Keynote by Professor Charles Ogletree: The Ethical Considerations of
a Lawyer President**

9:30–10:30 a.m. Session 1A: Criminal Jurisdiction in Indian Country
Session 1B: Energy and the Environment

10:45–11:45 a.m. Session 2A: The Cherokee Freedmen
Session 2B: Sentencing After *Booker*

Noon–1:30 p.m. Foundation of the FBA Fellows Luncheon

1:45–2:45 p.m. Session 3A: Issues and Ethics for Lawyers Working with Corporate and
Tribal General Counsel

Session 3B: Federal Court-Assisted Recovery Efforts: Innovations to Reduce
Post-Conviction Substance Abuse and Recidivism

2:00–4:00 p.m. Foundation of the FBA Board Meeting

3:00–4:00 p.m. Session 4A: Issues and Ethics for Lawyers Working with Corporate and
Tribal General Counsel (continued)

Session 4B: The Roberts Court on Criminal Law

4:15–5:15 p.m. Session 5A: Delivery of Veterans Services in Indian Country

Session 5B: How to Conduct a Jury Trial

6:00–9:00 p.m. Reception at the Oklahoma History Center

FRIDAY, SEPT. 11

7:00 a.m.–5:00 p.m.	Registration Desk Open
8:00 a.m.–4:00 p.m.	Exhibits Open
8:00–8:30 a.m.	Tenth Circuit Swearing-In Ceremony
8:30–9:30 a.m.	Welcoming Remarks by Oklahoma Governor Brad Henry; Plenary Keynote by Dean Erwin Chemerinsky: Enhancing Government: Federalism for the 21st Century
9:45–10:45 a.m.	Session 6A: The Roberts Court on Indian Law Session 6B: Bankruptcy: Creditors' Rights and Fraud
11:00 a.m.–Noon	Session 7A: Homeland Security and Civil Rights Session 7B: Expert Discovery Issues in Civil Cases
12:15–2:00 p.m.	Younger Federal Lawyer Awards Luncheon
2:30–3:30 p.m.	The Oklahoma City Bombing Through the Eyes of Those Who Were Here (Held at the Museum Institute for the Prevention of Terrorism)
4:00–4:30 p.m.	Remarks from the Architects of the Oklahoma City National Memorial
3:30–5:00 p.m.	Tours of the Memorial and Museum
2:00–4:00 p.m.	Circuit Vice Presidents Training
2:00–4:30 p.m.	YLD Board Meeting
2:00–4:30 p.m.	Health Law Section Board Meeting
6:00–9:00 p.m.	Dinner and Reception at the National Cowboy and Western Heritage Museum

SATURDAY, SEPT. 12

7:00 a.m.–5:00 p.m.	Registration Desk Open
8:30–9:45 a.m.	Circuit Vice Presidents Meeting
8:30–11:00 a.m.	Section and Division Chairs Meeting
10:00–11:30 a.m.	Chapter Education Program Presented by the Vice Presidents of the Circuits
11:45 a.m.–1:45 p.m.	FBA Awards Luncheon
2:00–5:00 p.m.	National Council Meeting
7:00–10:30 p.m.	Reception and Presidential Installation Banquet

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MODES continued from page 4

transportation security.

Michael Lovelace provided insight into one of TSA's security initiatives known as VIPER—Visible Intermodal Protection and Response. Intended to provide enhanced security and promote user confidence in all modes of transportation, VIPER teams are comprised of federal law enforcement personnel and transportation security inspectors who work jointly with local level officials to conduct surveillance and counter potential terrorist activity in places like subway stations and on ferries. While these teams are relatively small in number, the program is slated for growth; Lovelace indicated that TSA's 2010 budget request includes \$50 million to fund 15 new VIPER teams. In addition, he noted that the program has

received bipartisan support from Capitol Hill.

In closing, Wasowicz acknowledged the contingent of DOT employees present, and Goldman recognized the ongoing partnership between TSA and DOT as the overlap and interconnectivity between TSA's security mission and DOT's safety mission continues to be defined. ❖

The Talk Around DOT

After a successful career with Continental Airlines, David Grizzle was named the new chief counsel at the **Federal Aviation Administration (FAA)**. Grizzle is a graduate of Harvard Law School and a former transportation and infrastructure coordinator for the U.S. State Department in Afghanistan.

Former Arizona state transportation official Victor Mendez was confirmed by the U.S. Senate as administrator of the **Federal Highway Administration (FHWA)**. Mendez started at the Arizona Department of Transportation in 1985 as a transportation engineer, became deputy director in 1999, and then became acting director in 2001. He served as president of the American Association of State and Highway Transportation Officials in 2007.

President Obama signed into law the Consumer Assistance to Recycle and Save Act of 2009 last June. The \$1 billion dollar voluntary program, titled the Car Allowance Rebate System (CARS), administered by the **National Highway Traffic Safety Administration (NHTSA)** helps consumers purchase new, more fuel efficient vehicles when they trade-in less fuel efficient ones. Consumers can get a credit of \$3,500 or \$4,500—depending on the type of vehicle they purchase or lease and the difference in fuel economy between the pur-

chased or leased vehicle and the vehicle traded-in. Get updated information at www.cars.gov/.

As of July, the **Federal Transit Administration (FTA)** has awarded 368 grants totaling \$3.43 billion under the American Recovery and Reinvestment Act of 2009 (ARRA). A total of 321 grants valued at \$3.92 billion are undergoing review, for a potential total of 715 grant awards valued at \$7.6 billion dollars.

The **Federal Railroad Administration (FRA)** has received 278 pre-applications for high-speed passenger rail grants totaling \$102 billion. The money will come from ARRA funds for the High-Speed Intercity Passenger Rail competitive grant program.

The **Federal Motor Carrier Safety Administration (FMCSA)** announced the results of its spring passenger carrier strike-force initiative, Operation Safe Student, carried out in all 50 states and U.S. territories from May 8 to May 21. Overall, enforcement officials performed approximately 8,700 roadside inspections, which resulted in more than 650 buses and 225 drivers placed out-of-service for noncompliance with federal regulations. ❖

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THREE WAYS TO APPLY TODAY: ① Mail application to FBA, 1220 North Fillmore St., Suite 444, Arlington, VA 22201; ② Fax application to (571) 481-9090; or ③ Join online at www.fedbar.org/connect.html. For more information, contact the FBA membership department at (571) 481-9115 or membership@fedbar.org.

FEDERAL BAR ASSOCIATION APPLICATION FOR MEMBERSHIP (CONTINUES ON REVERSE)

Applicant Information

TAX-SUM09

First Name M.I. Last Name Suffix (e.g. Jr.) Title (e.g. Attorney At Law, Partner, Assistant U.S. Attorney)

Male Female Have you been an FBA member in the past? yes no Which do you prefer as your primary address? business home

Firm/Company/Agency		Number of Attorneys	
Address		Suite/Floor	
City	State	Zip	Country
()	()		
Phone	Fax	E-mail	

Address			Apt. #
City	State	Zip	Country
()	()		
Phone	Fax		
/ /			
Date of Birth	E-mail		

Bar Admission and Law School Information (required)

U.S.	Court of Record: _____
	State/District: _____ Original Admission: / /

Tribal	Court of Record: _____
	State: _____ Original Admission: / /

Foreign	Court/Tribunal of Record: _____
	Country: _____ Original Admission: / /

Students	Law School: _____
	State/District: _____ Expected Graduation: / /

Practice Information

PRACTICE TYPE

- Private Sector: Private Practice Corporate/In-House
 Public Sector: Government Association Counsel
 Non-profit University/College
 Military Judiciary

PRIMARY PRACTICE AREAS

- | | |
|--|--|
| <input type="radio"/> Administrative | <input type="radio"/> Admiralty/Maritime |
| <input type="radio"/> ADR/Arbitration | <input type="radio"/> Antitrust/Trade |
| <input type="radio"/> Bankruptcy | <input type="radio"/> Communications |
| <input type="radio"/> Criminal | <input type="radio"/> Environment/Energy |
| <input type="radio"/> Federal Litigation | <input type="radio"/> Financial Institutions |
| <input type="radio"/> General Counsel | <input type="radio"/> Government Contracts |
| <input type="radio"/> Health | <input type="radio"/> Immigration |
| <input type="radio"/> Indian | <input type="radio"/> Intellectual Property |
| <input type="radio"/> International | <input type="radio"/> Labor/Employment |
| <input type="radio"/> Military | <input type="radio"/> Social Security |
| <input type="radio"/> State/Local Government | <input type="radio"/> Taxation |
| <input type="radio"/> Transportation | <input type="radio"/> Veterans |

Other: _____

Membership Levels

SUSTAINING MEMBERSHIP

Members of the association distinguish themselves when becoming sustaining members of the FBA. Sixty dollars of the sustaining dues are used to support educational programs and publications of the FBA. Sustaining members receive a 5% discount on the registration fees for all national meetings and national CLE events.

	<u>Private Sector</u>	<u>Public Sector</u>
Member Admitted to Practice 0-5 Years	○ \$140	○ \$120
Member Admitted to Practice 6-10 Years	○ \$190	○ \$165
Member Admitted to Practice 11+ Years	○ \$215	○ \$180
Retired (Fully Retired from the Practice of Law).....	○ \$135	○ \$135

ACTIVE MEMBERSHIP

Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

	<u>Private Sector</u>	<u>Public Sector</u>
Member Admitted to Practice 0-5 Years	○ \$80	○ \$60
Member Admitted to Practice 6-10 Years	○ \$130	○ \$105
Member Admitted to Practice 11+ Years	○ \$155	○ \$120
Retired (Fully Retired from the Practice of Law).....	○ \$75	○ \$75

ASSOCIATE MEMBERSHIP

Foreign Associate Admitted to practice law outside the U.S. ○ \$155
Law Student Associate Currently enrolled in law school..... ○ \$25

Dues Total: \$ _____

Practice Area Sections

○ Alternative Dispute Resolution.. \$15	○ Indian Law \$15
○ Antitrust and Trade Regulation \$15	○ Intellectual Property & Communications Law..... \$10
○ Bankruptcy Law..... \$10	○ International Law..... \$10
○ Criminal Law..... \$10	○ Labor and Employment Law..... \$15
○ Environment, Energy, and Natural Resources..... \$15	○ Social Security..... \$10
○ Federal Litigation..... \$10	○ State and Local Government Relations..... \$5
○ Financial Institutions and the Economy N/C	○ Taxation..... \$15
○ Government Contracts..... \$20	○ Transportation & Transportation Security Law..... \$20
○ Health Law..... \$10	○ Veterans Law..... \$10
○ Immigration Law..... \$10	

Career Divisions

- Federal Career Service (past/present employee of federal government).....N/C
- Judiciary (past/present member or staff of a judiciary).....N/C
- Corporate & Association Counsels (past/present member of corporate/association counsel's staff)..... \$10
- Senior Lawyers* (age 55 or over)..... \$10
- Younger Lawyers* (age 36 or younger or admitted less than 3 years)N/C

*For eligibility, date of birth must be provided.

Sections and Divisions Total: \$ _____

Chapter Affiliation

Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location.

*No chapter currently located in this state or location.

Alabama ○ Birmingham ○ Mobile ○ Montgomery ○ North Alabama	Southwest Florida ○ Tallahassee - \$25 ○ Tampa Bay	Nebraska* ○ At Large	Puerto Rico ○ Hon. Raymond L. Acosta/ Puerto Rico-\$10
Alaska ○ Alaska	Georgia ○ Atlanta-\$10	Nevada ○ Nevada	Rhode Island ○ Rhode Island
Arizona ○ Phoenix ○ William D. Browning/ Tucson-\$10	Hawaii ○ Hawaii	New Hampshire* ○ At Large	South Carolina ○ South Carolina
Arkansas* ○ At Large	Idaho ○ Idaho	New Jersey ○ Central Jersey Shore ○ New Jersey	South Dakota* ○ At Large
California ○ Central Coast ○ Inland Empire ○ Los Angeles ○ Northern District of California ○ Orange County ○ Sacramento ○ San Diego ○ San Joaquin Valley	Illinois ○ Chicago Indiana ○ Indianapolis	New Mexico* ○ At Large	Tennessee ○ Chattanooga ○ Memphis ○ Mid-South ○ Nashville ○ Northeast Tennessee
Colorado ○ Colorado	Iowa ○ Iowa-\$10	New York ○ Eastern District of New York ○ Southern District of New York	Texas ○ Austin ○ Dallas-\$10 ○ Del Rio-\$25 ○ El Paso ○ Fort Worth ○ San Antonio ○ Southern District of Texas-\$25 ○ Waco
Connecticut ○ District of Connecticut	Kansas ○ At Large	North Carolina* ○ At Large	Utah ○ Utah
Delaware ○ Delaware	Kentucky ○ Kentucky	North Dakota* ○ At Large	Vermont* ○ At Large
District of Columbia ○ Capitol Hill ○ D.C. ○ Pentagon	Louisiana ○ Baton Rouge ○ Lafayette/Acadiana ○ New Orleans ○ North Louisiana	Ohio ○ John W. Peck/Cincinnati/ Northern Kentucky ○ Columbus ○ Dayton ○ Northern District of Ohio-\$10	Virginia ○ Northern Virginia ○ Richmond ○ Tidewater
Florida ○ Broward County ○ North Central Florida ○ Jacksonville ○ Northwest Florida ○ Orlando ○ Palm Beach County ○ South Florida	Massachusetts ○ Massachusetts - \$10	Oklahoma ○ Oklahoma City ○ Northern/Eastern Oklahoma	Virgin Islands ○ Virgin Islands
	Michigan ○ Eastern District of Michigan ○ Western District of Michigan	Oregon ○ Oregon	Washington* ○ At Large
	Minnesota ○ Minnesota	Pennsylvania ○ Eastern District of Pennsylvania ○ Middle District of Pennsylvania ○ Western District of Pennsylvania	West Virginia* ○ At Large
	Mississippi ○ Mississippi		Wisconsin* ○ At Large
	Missouri ○ At Large		Wyoming ○ Wyoming
	Montana ○ Montana		

Chapter Total: \$ _____

Payment Information and Authorization Statement

TOTAL DUES TO BE CHARGED

(membership, section/division, and chapter dues): \$ _____

○ Check enclosed, payable to Federal Bar Association
Credit: ○ Visa ○ MasterCard ○ American Express

Name on card (please print)

Card No. Exp. Date

Signature Date

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application and/or the immediate termination of my membership. I also understand that by providing my fax number and email address, I hereby consent to receive faxes and email messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant

Date

(Signature must be included for membership to be activated)

*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5% which is used for congressional lobbying and is not deductible. Your FBA dues include \$14 for a yearly subscription to the FBA's professional magazine.