



Airport Law 101: Keeping the Dedicated Airport Law Practitioner Engaged

Mária Zulick Nucci

American airports have been subject to discussion of privatization of their ownership, operation or management, like other facilities and activities traditionally owned or run by government entities. For instance, the Airport Privatization Pilot Program, under the Federal Aviation Administration (FAA) Authorization Act of 1996, provided for projects to privatize up to five airports of varying sizes. However, airports largely remain owned and operated by government entities: federal (the two Washington, D.C., airports), state, county, or municipal.

The Existing Status of Airports

Many airports are operated by authorities created by legislation or inter-governmental contract, which are sometimes described as quasi-governmental, quasi-municipal or quasi-corporate. As a practical matter, these should be regarded as governmental, using the test whether their actions are subject to legal controls applicable to government agencies, such as laws on open or public meetings; public employment, bidding and contracting; freedom of information (FOIA); eminent domain; and civil rights, particularly Section 1983.

In turn, the word privatization, sometimes used outside of the Pilot Program, can be misleading, or at least imprecise. Frequently, if not typically, what is described as privatization is the management of one or more aspects of airport activity and operations, often the in-terminal concessions, by a private entity under contract with the public entity owner, which retains ownership of the airport facility.

By contrast, airports that remain wholly operated by a public entity have aspects of airport activity that seem closer to the private sector. First, they exercise both proprietary and governmental functions. Before deregulation of airlines in 1978, airports could be, perhaps simplistically, regarded as bus stations with wings. Since then, airports have in some respects become competitive businesses, competing with each other to attract new or increase existing air service, procure aviation or non-aviation development, and secure better contractual terms than competitor airports in areas such as concessions and rent, where the same or similar businesses operate at several airports. In fact, federal law can require submission of competition plans, as will be seen. They are "enterprise-funded," operating on revenues generated on or at the airport. Although airports can seek funds through such sources as Airport Improvement Program (AIP) grants and passenger facility charges (PFCs), there are federal requirements for obtaining and using these funds.

Airports as Entrepreneurial Entities

Airports, particularly in the current economic climate, increasingly look to entrepreneurial sources of revenue more commonly associated with private-sector entities, such as increased



Letter from the Editor

Hector O. Huezo

Welcome to the Winter 2010 edition of *TransLaw*! Thanks to the Board of the Transportation and Transportation Security Law Section for its continued support and encouragement. This issue proves to be another informative one:

- Francis J. Duggan, president of Victims of Pan Am 103 Inc., provides a provocative piece on the release of a terrorist from Scottish detention to Libya.
- Mária Nucci, an attorney admitted to practice in Pennsylvania and New Jersey, gives us an overview of existing and future legislation and regulations affecting airports.
- Nancy Kessler continues her "Aviation Matters" column and details the latest on the slot auction rules at New York airports and the LAX airline fee dispute.

As always, we encourage you to help us find new members—the membership application appears on the last pages of this issue. Please send this issue to your colleagues and encourage them to join, and if you are not a member, please consider joining!

Similarly, if you or someone you know is looking to publish a transportation-related article, would like to provide a VIP profile, or has an idea for other items to include in future issues of *TransLaw*, please let me know at hector.huezo@dot.gov.

We hope that you enjoy this issue of *TransLaw* and look forward to your involvement with the section! ❖



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Pan Am Flight 103 Revisited

Francis J. Duggan

Now that the decision has been made to transfer the case of the self-proclaimed mastermind of the September 11 attacks, Khalid Sheikh Mohammed, to a civilian trial in Manhattan instead of a Military Commission, the families of the thousands who perished on 9/11 will face a year or more to relive the horror of that day. Imagine a scenario where Mohammed, who has already confessed and bragged about his actions, is released from prison and allowed to go home to a hero's welcome; then, try to imagine the pain that those families would endure.

This is the pain that the families of Pan Am Flight 103 victims experienced when the only person convicted of that 1988 bombing was released by the Scottish government to return to Libya last summer. The families' anger and frustration was matched by that of countless of police officers, investigators, prosecutors, intelligence officers and government officials from 19 separate nations who spent 20 years on the case.

Pan Am Flight 103 exploded over Lockerbie, Scotland, on its way from London to New York on Dec. 21, 1988. All 259 passengers and crew and 11 residents of the town of Lockerbie perished. A joint investigation between Scottish and American authorities led to the indictments of two Libyans, Abdelbaset Al-Megrahi and Al Amin Khalifa Fhimah, in 1991. Col. Muammar Gadhafi of Libya refused to turn these men over for a trial unless it would take place in an Arab country. In spite of three United Nations (UN) resolutions and the imposition of strict economic sanctions, the accused bombers remained in Libya. The U.S. Congress and two presidential administrations did what they could, to no avail, but the families continued to pressure Congress to amend the Foreign Sovereign Immunities Act to permit a civil suit

against Libya.

In 1999, after lengthy negotiations, Libya agreed to a trial of the two accused citizens in a specially convened court in the Netherlands. The agreement required that any person found guilty would serve his sentence in Scotland. In May 2000, the trial began before three senior Scottish judges, without a jury; in 2001, after 130 court days of trial, the judges found Megrahi guilty beyond a reasonable doubt and acquitted Fhimah. Megrahi appealed his conviction and 27-year prison term, but his appeal was rejected unanimously by five Scottish appellate judges in 2002. Col. Gadhafi paid substantial compensation to the victims' families and "accepted responsibility" for the actions of his citizens. With Megrahi serving a life sentence in Scotland, the victims' families had a small measure of justice, even though he had not acted alone.

Due to its location in the Netherlands, the Scottish press did not cover this lengthy trial as closely as it would have if it had been held in Scotland, and the Libyan government had mounted a massive public relations effort in Scotland and in the United States to claim Megrahi's innocence. It is worthwhile, then, to list some of the factors before the court in finding Megrahi guilty beyond a reasonable doubt.

- Megrahi was found to be an agent of the Libyan Intelligence Service and who carried a false passport.
- Libya was proved to have bombed a French flight over Africa in 1989.
- Libyan officials received 20 sophisticated bomb timers from a company called MEBO[AU: spell out?], and a fragment of one of these was among the debris found at Lockerbie.
- Megrahi had business relations with

MEBO, shared a business address with that company, and had experience with explosives using these timers.

- Megrahi travelled to Malta on Dec. 7, 1988, and purchased random clothing to fill up the suitcase that was determined to have contained the radio cassette bomb.
- The timer fragment was found along with parts of the radio in a blast-damaged fragment of a shirt manufactured in Malta and carried by Mary's House, whose shopkeeper identified Megrahi as the purchaser of numerous articles of clothing that were forensically determined to have been in the bomb bag.
- Fhimah's diary documented that he had accomplished the task of obtaining luggage tags from Air Malta, and his access badge indicated that he used it in December 1988.
- Fhimah and Megrahi traveled from Libya to Malta together on the evening of Dec. 20, 1988.
- Megrahi used his false passport and stayed in Malta less than 24 hours before returning to Libya.

All of this history was revisited in 2007 when British Prime Minister Tony Blair, in a parting act, signed a Prisoner Transfer Agreement with Libya but claimed that the Lockerbie bomber was not a consideration in negotiating this treaty. The Scottish government, new to its independence under devolution, protested that it was now responsible for its own foreign policy and did not want to be included in this Prisoner Transfer Agreement, which to them clearly covered Megrahi, the only Libyan residing in a Scottish prison. The British government claimed that it

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PAN AM continued from page 3

was not able to negotiate the exclusion of Scotland from coverage under the agreement, but said that the decision to cover Megrahi was for the Scots to make. It was later claimed by UK officials as well as Col. Gadhafi's son, Saif Gadhafi, that the agreement was always designed to include Megrahi.

The British government appeared to wash their hands of the decision to release Megrahi, so the question fell to the Scottish Minister for Justice, Kenny MacAskill. To be eligible for release under the Prisoner Transfer Agreement, there can be no pending legal action, and Megrahi had been reluctant to give up his latest appeal, launched as a result of a recommendation of the Scottish Criminal Review Commission. His attorneys did, however, seek to have him released under a provision of Scottish law governing "compassionate release," whenever a prisoner is within three months of death. Claiming terminal prostate cancer, Megrahi had applied for such a release the previous November, but a court determined that his prostate cancer was not as advanced as claimed. Six months later, Megrahi and his attorneys mounted another effort, with much support from the tabloids, a Scottish Member of Parliament, a retired law professor who had been pleading Megrahi's case for years, and even from some victims' families in Scotland, to declare him to be within the required three months of death. Some physicians, paid for by Libya, found him to be terminally ill but never produced a medical report.

With pressure mounting, MacAskill told the Scottish Parliament that he would make a decision to release Megrahi either under the provisions of the Prisoner Transfer Agreement or under compassionate relief.

On June 20, 2009, U.S. Attorney General Eric Holder telephoned MacAskill and stated that the U.S. was opposed to Megrahi's release, that there had been an agreement among nations that the prisoner would

serve his term in Scotland, and that if released, Megrahi would return to "a hero's welcome in Libya." During a state visit to Africa, Secretary of State Hillary Clinton also telephoned MacAskill with a similar message, and the White House made it known to MacAskill that President Obama was opposed to the release of Megrahi. The families of the American victims also made their case in a teleconference with MacAskill from the British Embassy in Washington, D.C., and the Consulate in New York. MacAskill told the victims' families that he would tell them his decision before they read it in the press. The families thought that they had been convincing enough in their teleconference and that their wishes would prevail.

On August 18, Megrahi received permission to withdraw his appeal, On August 19, John Brennan, assistant to the President for homeland security and terrorism, spoke to MacAskill at the behest of the President and came away from the conversation not knowing what MacAskill would do. However, he had been assured through diplomatic channels that the Libyans would not have any "celebratory activities" if Megrahi's release to Libya took place.

On August 20, MacAskill announced that he was releasing Megrahi on compassionate grounds based on a report of several Libyan-paid physicians that Megrahi had three months to live. Pertinent parts of the medical report have not been made public. MacAskill's announcement stated that he was not releasing Megrahi under the Prisoner Transfer Agreement between the UK and Libya.

Within the hour, Megrahi was on a Libyan government plane in the company of Saif Gadhafi. The promise of "no celebratory activity" was broken with parades and demonstrations in Libya. The timing coincided with the celebration of the 40th anniversary of the revolution that brought Gadhafi to power.

FBI Director Robert Mueller, breaking a lifelong practice of not commenting on another prosecutor's case, wrote a very strong protest to MacAskill calling the release a "miscarriage of justice." On the three-month anniversary, Sen. Charles Schumer (D-N.Y.) called for the return of Megrahi to a Scottish jail, but there is little that can be done in that regard.

Nevertheless, the families continue to protest, and they are usually met with approval. For example, when Col. Gadhafi travelled to New York for an appearance at the UN in September, they organized a large demonstration, along with Libyan expatriate groups who had family members killed and protestors from Northern Ireland whose families experienced deaths as a result of explosives and weapons provided to the IRA by Libyans for many years.

The constant reappearance of Col. Gadhafi on the world stage reopens the wounds of the family members touched by the tragedy of Pan Am Flight 103. Khalid Sheikh Mohammed's trial in New York will do the same to the families of those who perished in the September 11 attacks. ❖

Frank Duggan is the president of Victims of Pan Am 103 Inc. He served on the President's Commission on Aviation Security and Terrorism in 1989-90 and was chair of the National Mediation Board when he retired from the federal government in 2004. He is a past chair of the Transportation and Transportation Security Law Section of the FBA and remains active in the section.

Aviation Matters

Nancy Kessler

DOT Cancels Slot Auction Rules

In October 2009, the U.S. Department of Transportation (DOT) Federal Aviation Administration (FAA) decided against making a market in slots at the busy New York airports and rescinded the rules that would have auctioned up to ten percent of slots at LaGuardia, John F. Kennedy International, and Newark Liberty International airports. The public comments opposed the slot auction rule and uniformly supported the rescission. Cancellation of the slot rules followed Congress' prohibition of the slot auctions in the DOT Appropriations Act for the fiscal year 2009 and the U.S. Court of Appeals for the District of Columbia Circuit's stay of the rule. Congestion Management Rule for LaGuardia Airport; and for John F. Kennedy International Airport and Newark Liberty International Airport, 74 Federal Register 52,132 et seq. (October 9, 2009); www.regulations.gov.

Following the cancellation of the slot auction rules, the FAA moved the U.S. Court of Appeals for the District of Columbia Circuit, in *Air Transport Association v. FAA* (D.C. Cir. No. 08-1262), to dismiss consolidated petitions for challenging the rules; on Oct. 14, 2009, the court granted the unopposed motion to dismiss.

Flight quotas at the airports remain through Oct. 29, 2011. Operating Limitations at Newark Liberty International Airport, John F. Kennedy International Airport, and LaGuardia Airport, 74 Federal Register 51,648 et seq. (October 7, 2009); www.regulations.gov.

Court Remands Los Angeles International Airport-Airline Fee Dispute

May an airport impose an airline charge for use of terminal space,

based on fair market valuation for non-airfield space? And if so, how may an airport calculate its lost opportunity costs? Is it unjustly discriminatory for an airport to charge carriers whose leases have expired not only for their use of gates but also for their share of concourse space, while charging carriers under long-term leases for their gate space only? And, should the alleged monopoly power of an airport have a bearing on the fee dispute? These types of questions were raised by the U.S. Court of Appeals for the District of Columbia in its Aug. 7, 2009, decision remanding to the DOT certain issues about Los Angeles International Airport's fees imposed on airlines.

On Nov. 24, 2009, the DOT issued a notice on remand, stating that there may be an opportunity for the carriers and the airport to settle their differences about the fee disputes arising from the remanded issues on a local level, without federal intervention. The DOT invited the parties to detail any settlement possibilities and to submit comments and input on recommended procedures going forward with the remanded proceeding. *Alaska Airlines Inc et al. v. U.S. Department of Transportation*, 575 F.3d 750 (D.C. Cir. 2009), on petitions for review of DOT Order 2007-6-8, (June 15, 2007), DOT-OST-2007-27331, www.regulations.gov.

Non-Airport Proprietor Landing Fees Held Unlawful

May a municipality that is not an airport proprietor, charge airlines for the privilege of landing at runways located within its boundaries? The answer is no, according to a decision by a panel of the U.S. Court of Appeals for the Third Circuit, which upheld the DOT decision that such privilege fees violate the Anti-Head Tax Act. *Township of Tinicum v.*

U.S. Department of Transportation, 582 F.3d 482(3d Cir. Sept. 14, 2009) (No. 08-1830); on petition for review of DOT Order 2008-3-18 (Mar. 24, 2008). On Nov. 9, 2009, the court denied the township's petition for rehearing en banc.

Future of U.S. Aviation Forum

On Nov. 12, 2009, DOT Secretary Ray LaHood and FAA Administrator Randall Babbitt hosted a forum on the future of U.S. aviation at which representatives of domestic airlines, airports, financial and credit rating firms, labor unions, aircraft manufacturers, and consumer groups convened to discuss the state of the industry, events shaping the future of the industry and areas for future work. At the forum, the secretary announced the creation of an advisory committee on the future of aviation.

Rule on Enhancing Airline Passenger Protections

On Dec. 21, 2009, the DOT issued a historic rule targeting tarmac delays. The rule, called Enhancing Airline Passenger Protections, will take effect in the spring of 2010, and will strengthen air travelers' rights by requiring air carriers to adopt contingency plans for lengthy tarmac delays, such as more than three hours for domestic flights. Passengers must be deplaned unless the pilot determines there is a safety or security-related impediment to deplaning passengers or the FAA's Air Traffic Control advises the pilot that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations. The rule also requires air carriers to respond to consumer problems, deems the continued holding

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AIRPORT LAW *continued from page 1*

terminal concession revenue, and non-aviation development of off-terminal property owned by the airport or of property not designated for aviation use. Airport owners are typically very sensitive to their enterprise-funded status, and to their status and visibility in their local communities, noting to their local communities that “no local tax dollars” are used for their development, maintenance and operation. In turn, this sensitivity to such non-legal, “political” issues illustrates the overall federal-to-local legal framework in which airport owners must operate: from federal laws on financial self-sustainment, treatment of aeronautical users, grants, PFCs, land acquisition, and noise abatement, to municipal zoning and building ordinances and codes.

Despite having proprietary functions and being enterprise-funded, airports can seek several types of federal funding, the best known being under the FAA’s Airport Improvement Program (AIP) for grant funds. A main element of qualification for procuring and keeping funding is compliance with “Sponsor’s Assurances” or “Grant Assurances,” promises by the airport owner that it will comply with various federal laws on airport management and operation.

Laws Affecting Airports

Following is an overview of certain key sources of laws applicable to airport ownership, management, operation and funding. Some directly govern airports, while others, perhaps most notably the Airline Deregulation Act of 1978, affect airports by their effect on airlines or other components of airport activity. At the federal level, the main body of “airport law,” as it were, can be found in Title 49 (Transportation), U.S.C., and Titles 14 (Aeronautics and Space) and 49 (Transportation), C.F.R. Regulations in Title 14 are also referred to as “Federal Aviation Regulations” or “FARs.” With regard to some of the earlier federal statutes, in 1994 vari-

ous transportation laws were recodified in Title 49, U.S.C., but without extensive substantive change. Airports are also governed, obviously, by the Department of Transportation (DOT) and the FAA, through federal regulations, policy statements, Advisory Circulars (A/Cs), Orders and directives.

Representative list of Legislative and Regulatory Enactments Affecting Airports:

- Airport and Airway Development Act of 1970 (created the Airport and Airway Trust Fund).
- Airline Deregulation Act of 1978.
- Aviation Safety and Noise Abatement Act of 1979 (P.L. 96-143): 14 C.F. R. Part 150, Airport Noise Compatibility Planning.
- Airport and Airway Improvement Act of 1982 (P.L. 97-248) (AAIA).
- Airport and Airway Safety and Capacity Expansion Act of 1987.
- Airport Noise and Capacity Act of 1990: Airport Noise Control and Land Use Compatibility Program (ANCLUC).
- FAA Authorization Act of 1994 (P.L. 103-305). The FAAAA generated the policy statement that airports must seek to be financially “as self-sustaining as possible.”
- FAA Contract Tower Program (1994) (to provide for contracted control tower services, typically at smaller airports, but with FAA oversight).
- Airport Revenue Protection Act of 1996 (P.L. 104-264, 110 Stat. 3269) (FAA Reauthorization Act of 1996).
- FAA Authorization Act of 1996 (created the aforesaid Airport Privatization Pilot Program).
- Aviation and Transportation Security Act (ATSA) (November 19, 2001) (created the Transportation Security Administration (TSA)).
- Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) (new process for certain large and medium hub airports to file competition plans as part of the approval process for a

PFC collection).

- Vision 100 – Century of Aviation Reauthorization Act (2003) (increased AIP funding; decreased the required airport “matching share” from 10% to 5%; general aviation airports could use AIP funds for fuel farm and hangar projects; reauthorized AIR-21).
- Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7695 (1999) (based on the AAIA and 49 U.S.C. Section 47107, and commonly known as “the revenue-diversion policy”).
- FAA Order 5100.38C, AIP Handbook (guidance for procurement and use of Airport Improvement Program funding, including the FAA’s Letter of Intent program and AIP Program Guidance Letters).
- FAA Order 5100.39A, Airport Capital Improvement Plans (CIP) (for planning projects within the National Airport System and AIP grants).
- FAA Order 5190.6B, Airport Compliance Requirements (September 2009; updates Order 5190.6A (1989)).
- 14 C.F.R. Part 77, Objects Affecting Navigable Airspace (construction in stated, defined areas near airports).
- Part 139, Certification of Airports (governs airports meeting applicability criteria regarding scheduled air service and minimum number of aircraft seats).
- Part 150, Airport noise compatibility planning (commonly known as “noise abatement” programs, including acquisition of privately owned property within an established “noise zone,” with relocation benefits and services for affected property owners).
- Parts 151 and 152, Federal Aid to Airports, and Airport Aid Program.
- Part 155, Release of airport property from surplus property disposal restrictions.
- Part 156, State block grant pilot program.

- Part 161, Notice and approval of airport noise and access restrictions.
- Part 1542, Airport Security Program.
- 49 C.F.R. Parts 23 and 26, Participation by disadvantaged business enterprise in airport concessions, and Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs.

Recent Legislation

Recent or pending legislation can be added to this collection. The American Recovery and Reinvestment Act of 2009 provides funding for airport projects; presently, funding of \$1.2B is committed for approximately 350 airports covering all 50 states. FAA reauthorization is pending, in the FAA Reauthorization Act of 2009 (H.R. 915); that bill provides for numerous revisions to the AIP, the PFC program, and other aviation legislation. H.R. 4217 extended FAA funding through March, with \$2 billion for AIP, appropriations for operations, facilities and equipment, and research, engineering, and development programs, and aviation excise taxes for the Airport and Airway Trust Fund, which expired on Dec. 31, 2009. Also pending is the Small Airport Relief Act of 2009 (S. 1202; H.R. 3159). Airports, at least those with international service, would be affected by passage of the Travel Promotion Act (S. 1023; H.R. 2935), which would, in part, create the Corporation for Travel Promotion, a nonprofit entity charged with promoting business, scholarly and leisure travel to the United States and assisting prospective visitors from other nations in understanding requirements for air travel to the United States in the post-September 11 world. On the funding front, airports seek the increase in the available maximum PFC, from \$4.50 to \$7.50. Airports also seek elimination of the alternative minimum tax (AMT) on private activity bonds (H.R. 7336).

Airport Security

Post-September 11 security is also

an issue for general aviation airports and users. In 2004, the TSA published Security Guidelines for General Aviation Airports. More recently, it issued an NPRM for the proposed Large Aircraft Security Program (LASP) would affect certain segments of general, business and corporate aviation, and was challenged, not because of disinterest in security, but concerns of the burdens it would place on this sector of aviation in relation to the perceived level of risk.

Air Traffic Control

Another key issue affecting airports is the effort toward modernization of air traffic control through the Next Generation Air Transportation System (NextGen), for satellite-based air traffic management. Air traffic control is also at issue in the FAA's NYNJPHL Airspace Redesign Implementation Plan, contemplated for four stages to Sept. 7, 2012. Despite the current economic climate, airports, in fact aviation overall, must plan for the future, including addressing issues of congestion, delays, noise and emissions. Significant legal activity resulted from the "slot auction" plan, for allocation of take off and landing slots to control congestion and delays and New York's JFK and Newark's Liberty Airports, both within the Port Authority of New York and New Jersey; in May 2009, Secretary of Transportation Ray LaHood announced the plan would not proceed, and this was formalized in October 2009.

Local Regulations

Besides federal statutes, regulations and similar sources of law, airports are governed by various state and local laws, including in the environmental, hazardous waste, employment, bidding, contracting, zoning, construction and civil rights areas, sometimes leading inevitably to questions of federal preemption. The federal-state and federal-local frameworks are illustrated by *McCarran International Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110

(Nev. 2006), *cert. denied*, 127 S.Ct. 1260 (2007), where a state supreme court found that a county height restriction ordinance, limiting construction near McCarran International Airport in Las Vegas, constituted a per se regulatory taking under the United States and Nevada Constitutions. A federal-state law conflict is more recently shown in *Georgia Carry.Org, Inc. v. City of Atlanta*, No. 08-15571-A (11th Cir.), concerning a Georgia state law interpreted by "gun rights" proponents as allowing privately owned guns in nonsecure areas of Hartsfield-Jackson Atlanta International Airport.

Other Matters

Airports can also face civil rights issues, including First Amendment matters, such as terms for sales of newspapers and other publications at the airport, picketing by employees of an airline or other airport tenant or user, solicitations by religious or political groups, religious holiday decorations, and accommodation of the religious beliefs of persons employed at or whose employment has a nexus to the airport, such as cab drivers. With current general media coverage of immigration issues, there have also been issues of "English only." And, to the extent that airports are owned by public agencies, First Amendment and other civil rights matters relating to employment by the airport owner itself can arise.

"Airport law" is thus clearly a wide-ranging practice area, perhaps consistent with the image of flight itself. It presents ongoing challenges and, as a result, can provide stimulation and satisfaction, for the dedicated airport law practitioner. ❖

Mária Zulick Nucci is a graduate of Temple University School of Law and is admitted to practice in Pennsylvania and New Jersey, and in several federal courts. She currently resides in Sparks, Nevada.

2009 General and Chief Counsels' Reception

The Transportation & Transportation Security Law Section of the Federal Bar Association held their annual general and chief counsels reception on September 30, 2009. This year the event honored two transportation lawyers of the year and one transportation security lawyer of the year. Newly appointed chief counsel of the maritime administration and chair of the section, Denise Krepp, was the emcee for the evening. Mr. C. Jonathan Benner, partner and transportation practice group leader at Troutman Sanders LLP was first to receive the Transportation Lawyer of the Year award. The next Transportation Lawyer of the Year award went to Jeffrey A. Klang, Regional Counsel,

Great Lakes Region, Office of Chief Counsel of the Federal Aviation Administration. The Transportation Security Lawyer of the Year award was then given to Charles V. Darr, an attorney at the Office of Maritime & International Law, U.S. Coast Guard, Department of Homeland Security. Family, friends, colleagues and transportation general and chief counsels all joined in congratulating the award recipients. Additionally, former section chair, Daeleen Chesley was presented with an award for her dedicated service to the Federal Bar Association as the section chair during 2007-2008. ❖



Left photo (l to r)—C. Jonathan Benner, Troutman Sanders LLP; Charles V. Darr, U.S. Coast Guard; and Jeffrey A. Klang, Federal Aviation Administration. Right photo (l to r)—Daeleen M. Chesley, former section chair, and Denise R. Krepp, current section chair.

FBA Goes Back to Law School

On Nov. 18, 2009, the Transportation and Transportation Security Law Section of the FBA hosted a Networking Social at the George Washington University Law School. Students from American University, Catholic University, Georgetown University, and Howard University law schools joined George Washington University Law School students in attendance. After a brief introduction to the

FBA by Section Chair Denise Krepp, students learned more about careers in transportation law through an informal question and answer session with attorneys from private practice, the Federal Aviation Administration, the Federal Railroad Administration, the Maritime Administration, and the Department of Transportation's Office of the General Counsel. ❖



2009 Transportation and Transportation Security Lawyers of the Year

C.J. "JONATHAN" BENNER is partner in the Washington, DC office of Troutman Sanders LLP. He has quickly transformed the firm's Transportation Practice Group into one of the most highly touted teams in the United States. Benner's law practice includes advice to vessel owners and operators on regulatory, environmental, and antitrust issues affecting the maritime industry. He appears as a litigator before federal administrative agencies and the federal courts of the United States. Prior to entering private practice in 1984 he was a trial and appellate attorney for the United States government. In his final three years of government service, Benner was the General Counsel of the U.S. Federal Maritime Commission. Benner currently represents the International Association of Independent Tanker Owners (INTERTANKO) for legal and governmental affairs matters in the United States. He was the lead counsel for INTERTANKO before the Supreme Court of the United States in the INTERTANKO v. Locke case. Benner has been recognized as one of America's Leading Lawyers for shipping law by Chambers USA since 2005. He has also been included in the Best Lawyers in America since 2006. He is a graduate of Georgetown University Law Center. ❖

CHARLES V. "BUD" DARR is a senior legal advisor for Marine Safety, Security and Environmental Stewardship programs in the Office of Maritime and International Law at Coast Guard headquarters in Washington, DC. He is the Coast Guard's principal legal expert in Horn of Africa counter-piracy matters and represents the Coast Guard in interagency, national, and international fora on the topic. Darr was a critical advisor during the MAERSK ALABAMA incident, working in real-time with numerous flag officers and inter-agency partners at a very senior level, which included interfacing with JCS, CENTCOM, and OSD. He has represented the U.S. government as Head of Delegation to numerous international meetings on piracy. He has also served on United States delegations to the International Maritime Organization at the Assembly, Committee, Sub-Committee, Diplomatic Conference, and

Working Group levels. Darr was chairman of the Drafting Committee at the recent Diplomatic Conference for the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 and is the Chairman of the Joint IMO/ILO Working Group related to Seafarer, Death, Personal Injury, and Abandonment. He is an advisor and delegate for the United States to the Contact Group on Piracy off the Coast of Somalia and has actively participated in each of its four Working Groups. He is a graduate of The George Washington University Law School. ❖

JEFFREY A. KLANG is Regional Counsel for the Great Lakes Region, Office of the Chief Counsel of the Federal Aviation Administration (FAA). A former officer in the U.S. Air Force, Klang began his legal career with the FAA in 1989 as an attorney in the International Affairs and Legal Policy Staff, where he quickly rose to become one of the agency's preeminent international aviation experts. Following the 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland, Klang was a key advisor in the rapid development and implementation of a number of new security measures. In 1992 he had a critical role in establishing the FAA's International Aviation Safety Assessment Program. In recognition of his expertise in international matters, Klang was picked to serve as the lead legal advisor for the 1996 negotiations with Russia aimed towards developing a bilateral agreement to enhance air routes between the United States and Russia. He was the principal advisor for the Federal Air Marshal Program leading up to 2001 and provided invaluable support during the weeks following September 11 with the transition of this program from the FAA to the Transportation Security Administration. In 2003, he became the Assistant Chief Counsel for the Europe, Africa, and Middle East Office based in Brussels, Belgium. Since then he has returned to the Great Lakes Region and made significant contributions at the Office of Chief Counsel. He is a graduate of The American University Washington College of Law. ❖

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out of a flight that is chronically late to be an unfair and deceptive practice, requires air carriers to publish information on flight delays on their websites, and requires air carriers to adopt customer service plans. Finally, the rule requires carriers to incorporate their contingency plans for lengthy tarmac delays and their

customer service plans in their contracts of carriage. Docket DOT-2007-0022, www.regulations.gov.

DOT Litigation News

Readers, remember to refer to the DOT website (Office of the Secretary/ Office of the General Counsel) for periodic reports on federal litigation

developments affecting all modes of transportation. www.dot.gov/ost/ogc/ ❖

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FEDERAL BAR ASSOCIATION APPLICATION FOR MEMBERSHIP (CONTINUES ON REVERSE)

Applicant Information

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
 Nonprofit University/College
 Military Judiciary

PRIMARY PRACTICE AREAS

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

Membership Levels

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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.

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Member Admitted to Practice 11+ Years	\$215	\$180
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Dues Total: \$ _____

Practice Area Sections

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

Career Divisions

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

*For eligibility, date of birth must be provided.

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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.

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

Name on card (please print)

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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 e-mail address, I hereby consent to receive faxes and e-mail 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.