



62nd Annual Workshop on Transportation Law

JULY 23–26, 2023

Richmond, VA

Convened by
Transportation Research Board

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WELCOME FROM CHAIR OF THE LEGAL RESOURCES SECTION, CRAIG GUSTAFSON

Welcome to the 62nd Annual Workshop on Transportation Law!

We are excited to be in the thriving historic capital city of Richmond, Virginia this summer. When the planning committee selected Richmond, we thought it would be an exciting backdrop for our group to convene and learn about recent developments in transportation law and policy. After all, the Virginia State Capitol houses the oldest elected legislative body in North America, and the Richmond Union Passenger Railway, which started operations in 1888, set the example for future electric-powered streetcar systems. We hope that you get out and enjoy the cobblestone streets, museums, churches, canals, and plenty of restaurants, shops, and opportunities for outdoor recreation.

For first time attendees, I encourage you to introduce yourself to me and the committee chairs, and let us know what you are hoping to get out of your TRB membership and your time at the workshop. For those of you returning, I hope that you enjoy reconnecting with friends and colleagues and that you have an opportunity to expand your professional network by meeting new attendees.

Since we met last summer in Portland, Oregon, there have been changes in the leadership of the section. Our former chair, Fred Wagner, has been promoted to chair of the Policy and Organization Group, which is comprised of the Legal Resources Section and the Executive Management Issues Section. We also have three new committee chairs: Jeff Graham for the General Law Committee; Edward (Ted) Boling and Julie Wilson-McNerney for the Environmental Issues in Transportation Law Committee. Thanks to our new chairs for taking on these key roles and to our returning chairs for continuing to donate your time and energy to making this workshop and all the other activities of your committees a success. Also, thanks to our dedicated TRB staff members, Bob Shea and Jo Johnson.

As usual, we have an action-packed agenda for this year's workshop. We begin the week with a panel comprised of senior legal officers from the USDOT, including representatives of the FHWA, FTA, and FRA. We are grateful they will be joining us to share updates from the administration on a number of key issues, including the continuing implementation of the IIJA/BIL, initiatives aimed at reducing the impacts of climate change, and initiatives aimed at addressing inequities in our transportation system. We end the week with an ethics session on civility and professional responsibility in the legal profession with presenters Judith Kaleta and Bruce Smith. In between the opening and closing sessions, we will be discussing many of the key legal and policy challenges facing transportation lawyers, policy makers, and other professionals in the industry.

In addition to the formal sessions of the workshop, the seven standing committees of the Legal Resources Section will be meeting. I encourage all attendees to take the opportunity to attend one or more of these meetings to connect with other members, share best practices, learn about future volunteer opportunities, and offer suggestions for the 2024 TRB Annual Meeting and the 2024 Transportation Law Workshop.

TRB's mission, in part, is to provide leadership in transportation improvements and innovation—the TRB legal workshop gives us the opportunity to discuss critical and timely topics such as the Build America Buy America Act, advancements relating to electric and automated vehicles, rail safety, and alternative uses of highway right-of-way. Whether you are a first-time attendee or have attended many times, we are honored that you have chosen to spend your valuable time with the TRB Legal Resources Section.

Sincerely,

Craig Gustafson, Chair, TRB Legal Resources Section (AJL00)
Minnesota Department of Transportation



Craig Gustafson

PLANNING COMMITTEE

This conference would not have been possible without the combined efforts of many individuals and organizations.

Legal Resources Committee Chairs

Craig Gustafson, Legal Resources Section (AJL00) Section Chair

Jeff Graham, Committee on General Law (AJL10)

Gregory Rodriguez, Committee on Transit & Intermodal Transportation Law (AJL20)

April Greenhouse, Committee on Contract Law (ALJ30)

Ellen Partridge, Committee on Emerging Technology Law (AJL40)

Edward (Ted) Boling and Julie Wilson-McNenney, Committee on Environmental Issues in Transportation Law (AJL50)

Christopher Kramer, Committee on Eminent Domain & Land Use (AJL60)

Terri Parker, Committee on Tort Liability & Risk Management (AJL70)

Staff List

Ann Brach, Director, Technical Activities

Robert J. Shea, Senior Program Officer and Counsel for Legal Research Projects

Joanice L. Johnson, Operations Coordinator

Megan Kaufmann, Senior Conference Manager

Kate Debelack, Meeting Assistant

COMMITTEE MEETINGS

Monday, July 24, 2023

12:15 PM–1:45 PM

General Law (AJL10)

Transit and Intermodal Transportation Law (AJL20)

Emerging Technology Law (AJL40)

Environmental Issues in Transportation Law (AJL50)

Tuesday, July 25, 2023

11:45 AM–1:15 PM

Contract Law (AJL30)

Eminent Domain and Land Use (AJL60)

Tort Liability and Risk Management (AJL70)

The Transportation Research Board is one of seven major programs of the National Academies of Sciences, Engineering, and Medicine. The mission of the Transportation Research Board is to increase the benefits that transportation contributes to society by providing leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal. The Board's varied committees, task forces, and panels annually engage about 7,000 engineers, scientists, and other transportation researchers and practitioners from the public and private sectors and academia, all of whom contribute their expertise in the public interest. The program is supported by state transportation departments, federal agencies including the component administrations of the U.S. Department of Transportation, and other organizations and individuals interested in the development of transportation.

www.TRB.org

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NICOLLE M. FLEURY

DEPUTY CHIEF COUNSEL, FEDERAL HIGHWAY ADMINISTRATION (FHWA)

Nicolle M. Fleury became the Deputy Chief Counsel of the Federal Highway Administration (FHWA) on January 3, 2016. In this position, she supervises and coordinates legal services regarding all aspects of the FHWA's programs. Nicolle directly advises the most senior officials in the FHWA and the U.S. Department of Transportation (U.S. DOT). Nicolle and her staff work with state and local government transportation attorneys and other customers to enhance their understanding of Federal laws and procedures relating to transportation.

From December 2011 to December 2015, Nicolle served as the Assistant Chief Counsel for Legislation, Regulations, and General Law, supervising the legal services related to delivering FHWA's legislative program, developing and coordinating regulations, matters concerning appropriations and fiscal law, and matters related to FHWA's internal programs.

Prior to becoming Assistant Chief Counsel, Nicolle served as a Senior Attorney Advisor in the Program Legal Services Division of the Office of the Chief Counsel. She also has served as Special Counsel to the U.S. DOT General Counsel and the FHWA Chief Counsel. Nicolle started at DOT as an Attorney Advisor.

Nicolle began her legal career working for the Maryland Department of Legislative Services.

SUBASH IYER

CHIEF COUNSEL, FEDERAL TRANSIT ADMINISTRATION (FTA)

Subash Iyer is Chief Counsel of the Federal Transit Administration. Since January 2021, he has served as the FTA's principal legal officer and advises the Administrator on all aspects of the FTA's programs, functions, and activities. Before joining the FTA, Mr. Iyer was Special Counsel for Ethics, Risk, and Compliance at the Metropolitan Transportation Authority (MTA) in New York, where he served as risk counsel to the largest public transit agency in North America.

Mr. Iyer was previously an attorney in private practice, where he worked on trial and appellate litigation matters and provided legal and strategic advice to corporate and individual clients on a wide range of issues. Mr. Iyer previously served as law clerk to Associate Justice Ruth Bader Ginsburg of the U.S. Supreme Court, Chief Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit, and Judge Jed S. Rakoff of the U.S. District Court for the Southern District of New York. Mr. Iyer received his J.D., summa cum laude, from New York University School of Law and his B.A., summa cum laude, from Columbia University. Before law school, he served as policy adviser to Administrator Karen G. Mills of the U.S. Small Business Administration and worked at a large management consulting firm. He and his wife have a young son and daughter.



Subash Iyer

PLENARY SPEAKERS

BRETT JORTLAND

DEPUTY CHIEF COUNSEL, FEDERAL RAILROAD ADMINISTRATION (FRA)

Brett A. Jortland has served as Deputy Chief Counsel for the Federal Railroad Administration (FRA) since September 2017. In this role, Brett is responsible for overseeing all FRA legal matters, providing ongoing legal advice to FRA senior leadership and program staff, and supervising a legal office of approximately fifty attorneys and professionals. In August 2007, Brett first joined the Department of Transportation (DOT) as a staff attorney in the Office of the General Counsel. He was then promoted in September 2012 to serve as the Deputy Assistant General Counsel for Regulation, where he helped manage an office of ten attorneys and professionals; provided expert legal and policy advice to senior DOT officials on high-profile rulemaking, regulatory, and administrative law issues; and advocated countless times for DOT's policy positions before the Office of Management and Budget.

During this time, Brett developed broad transportation expertise through his work on reviewing the legal, policy, and economic rationale supporting rulemakings involving railroads, motor carriers, pipelines, hazardous materials, and maritime matters. Before joining DOT, Brett was a Presidential Management Fellow at the Department of Health and Human Services, focusing mainly on issues related to procurement law and policy. Prior to his legal career, he served as a Field Artillery Officer in the United States Army. Brett received his J.D. from The Ohio State University, his M.B.A. from the University of Baltimore, his B.B.A. in Finance from James Madison University, and he is a graduate of the Federal Executive Institute.



Brett Jortland

CATHERINE MCGHEE, P.E.

CHIEF DEPUTY COMMISSIONER, VIRGINIA DEPARTMENT OF TRANSPORTATION

Cathy McGhee was appointed as VDOT's Chief Deputy Commissioner in May 2022. Ms. McGhee carries a wealth of industry knowledge that will continue to place VDOT as a leader in transportation innovation and technology. She is skilled in collaborating and working across multiple state agencies while working to find solutions to transportation challenges.

Ms. McGhee has more than 30 years of experience in traffic engineering and system operations, intelligent transportation systems, and data and performance measurement. Prior to her appointment, Ms. McGhee served in a dual role as the Director of the Office of Transportation Research and Innovation for the Commonwealth of Virginia and the Director of the Virginia Transportation Research Council (VTRC).

Ms. McGhee received her bachelor's degree from California Polytechnic State University, San Luis Obispo and her master's degree from the University of Virginia, both in civil engineering. She has held a professional engineer's license in Virginia since 2004.



Catherine McGhee

SCHEDULE AT-A-GLANCE

Sunday, July 23, 2023		
3:30 PM–6:00 PM	Registration	<i>James River Foyer</i>
5:30 PM–7:00 PM	Welcome Reception	<i>James River Foyer</i>
Monday, July 24, 2023		
7:30 AM–5:00 PM	Registration	<i>James River Foyer</i>
7:30 AM–8:00 AM	Continental Breakfast	<i>James River Foyer</i>
8:00 AM–8:15 AM	Welcome	<i>James River Salons ABC</i>
8:15 AM–10:00 AM	SESSION 1: OPENING PLENARY SESSION: Legal Updates and Perspectives from USDOT Senior Legal Officers	<i>James River Salons ABC</i>
10:00 AM–10:30 AM	Break	<i>James River Foyer</i>
10:30 AM–Noon	SESSION 2: Build America Buy America	<i>James River Salons ABC</i>
12:15 PM–1:45 PM	Lunch/Committee Meetings	
2:00 PM–3:30 PM Concurrent Sessions	SESSION 3: Game Changer or Same Law, Different Day: Consumer Expectations, Liability, Regulations and Policy for AV's	<i>James River Salons ABC</i>
	SESSION 4: Confusion and Conflation in Access Management	<i>James River Salon D</i>
3:30 PM–4:00 PM	Break	<i>James River Foyer</i>
4:00 PM–5:30 PM Concurrent Sessions	SESSION 5: Combatting Human Trafficking	<i>James River Salons ABC</i>
	SESSION 6: Multi-modal Legal Issues in High- Speed Rail Projects	<i>James River Salon D</i>
Tuesday, July 25, 2023		
7:30 AM–5:00 PM	Registration	<i>James River Foyer</i>
7:30 AM–8:00 AM	Continental Breakfast	<i>James River Foyer</i>
8:00 AM–9:30 AM Concurrent Sessions	SESSION 7: Alternatives to Fixed Price Contracts	<i>James River Salons ABC</i>
	SESSION 8: It's Electric..., but what about the Boogie Woogie Woogie?	<i>James River Salon D</i>
9:30 AM–10:00 AM	Break	<i>James River Foyer</i>
10:00 AM–11:30 AM Concurrent Sessions	SESSION 9: Summer 2023 IIJA Update	<i>James River Salons ABC</i>
	SESSION 10: Alternative Uses of Right- of-Way	<i>James River Salon D</i>
11:45 AM–1:15 PM	Lunch/Committee Meetings	
1:30 PM–3:00 PM Concurrent Sessions	SESSION 11: Post Covid Impacts to Supply Chain and Labor Challenges	<i>James River Salons ABC</i>
	SESSION 12: Council of Environmental Quality Interim NEPA Greenhouse Gas (GHG) Guidance and Recent Caselaw	<i>James River Salon D</i>
3:00 PM–3:30 PM	Break	<i>James River Foyer</i>
3:30 PM–5:00 PM Concurrent Sessions	SESSION 13: Rail Safety: Breaking News	<i>James River Salons ABC</i>
	SESSION 14: Show Me the Money [or Riders]!	<i>James River Salon D</i>

SCHEDULE AT-A-GLANCE

Wednesday, July 26, 2023		
7:30 AM–10:00 AM	Registration	<i>James River Foyer</i>
7:30 AM–8:00 AM	Continental Breakfast	<i>James River Foyer</i>
8:00 AM–9:30 AM Concurrent Sessions	SESSION 15: The Realities of ROW for Project Managers	<i>James River Salons ABC</i>
	SESSION 16: Do We Need the Feds? An Exploration of the Roles of Federal, State, Local, and Industry Actors in Enabling the Future of Mobility	<i>James River Salon D</i>
9:30 AM–10:00 AM	Break	<i>James River Foyer</i>
10:00 AM–Noon	SESSION 17: ETHICS SESSION: Civility and Professional Responsibility: Nice Guys (and Gals) Can Finish First	<i>James River Salons ABC</i>
Noon–12:15 PM	Closing Remarks & Adjournment	<i>James River Salons ABC</i>
12:45 PM–2:30 PM	Section Council Meeting (By Invitation Only)	<i>Roanoke Room</i>

PDH FORM



For the Professional Development Hours Credit Statement for Registrant Records, please scan the QR code, or go to <https://qrco.de/be71bP>.

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CONTINUING LEGAL EDUCATION

ATTENDANCE RECORD FORM

TRB has provided an on-line attendance record form. You may use this printed program form to keep track of which sessions you attended. However, please use the on-line form to document and submit your time for your official certificate of attendance.

**** Reminder: Introductory remarks, keynote addresses, business meetings, breaks, receptions, etc. are not to be included in the computation of credit. ****

SESSIONS					
DAY	TIME	TITLE	SESSION HOURS BASED ON 60 MINUTES	SESSIONS HOURS BASED ON 50 MINUTES	HOURS
MONDAY July 24	8:15 AM – 10:00 AM	SESSION 1: PLENARY SESSION	1.75	2.10	
	10:30 AM – 12:00 PM	SESSION 2	1.50	1.80	
	2:00 PM – 3:30 PM	SESSION 3 OR 4	1.50	1.80	
	4:00 PM - 5:30 PM	SESSION 5 OR 6	1.50	1.80	
TUESDAY July 25	8:00 AM - 9:30 AM	SESSION 7 OR 8	1.50	1.80	
	10:00 AM – 11:30 AM	SESSION 9 OR 10	1.50	1.80	
	1:30 PM – 3:00 PM	SESSION 11 OR 12	1.50	1.80	
	3:30 PM – 5:00 PM	SESSION 13 OR 14	1.50	1.80	
WEDNESDAY July 26	8:00 AM - 9:30 AM	SESSION 15 OR 16	1.50	1.80	
	10:00 AM – 12:00 PM	SESSION 17 (ETHICS)	2.00	2.40	
TOTAL CREDITS					

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WORKSHOP PROGRAM



To view the conference program online, scan the QR code
or go to: <https://qrco.de/be82Rb>

SUNDAY, JULY 23, 2023

3:00 PM–6:00 PM

Registration

James River Foyer

5:30 PM–7:00 PM

Welcome Reception

James River Foyer

MONDAY, JULY 24, 2023

7:30 AM–5:00 PM

Registration

James River Foyer

7:30 AM–8:00 AM

Continental Breakfast

James River Foyer

8:00 AM–8:15 AM

Welcome

James River Salons ABC

- Craig Gustafson, Minnesota Department of Transportation (MnDOT)
Chair: Legal Resources Section (AJL00)
- Catherine McGhee, P.E., Virginia Department of Transportation,
Chief Deputy Commissioner
- Robert Shea, Transportation Research Board (TRB), Senior Program Officer

8:15 AM–10:00 AM

SESSION 1-OPENING PLENARY SESSION: Legal Updates and Perspectives from USDOT Senior Legal Officers

James River Salons ABC

Moderator: Craig Gustafson, Minnesota Department of Transportation (MnDOT)

Sponsored by: Legal Resources Section (AJL00)

In this kick-off session, you will hear from and interact with a panel of senior legal officers with USDOT including the FHWA, FTA and FRA. You will learn about current policy initiatives at USDOT, hot legal topics, key regulatory actions and other important developments shaping our transportation system.

Panel

- Subash Iyer, Chief Counsel, Federal Transit Administration (FTA)
- Nicole Fleury, Acting Chief Counsel, Federal Highway Administration (FHWA)
- Brett Jortland, Deputy Chief Counsel, Federal Railroad Administration (FRA)

10:00 AM–10:30 AM

Break

James River Foyer

10:30 AM–Noon

SESSION 2: Build America Buy America

James River Foyer

Moderator: Jeff Graham, Texas Department of Transportation (TxDOT)

Sponsored by: General Law (AJL10); and Contract Law (AJL30)

The Build America, Buy America Act (BABA), a key piece of the Infrastructure Investment and Jobs Act (IIJA), significantly changed the Buy America domestic preference requirements on Federal-aid infrastructure projects with its enactment in 2021. Transportation stakeholders, from public agencies to construction contractors and the various parties making up the construction supply chain, continue to discuss the scope of the new BABA requirements and their implementation. This session will address: 1) BABA requirements generally, including implementing rules and waivers to date; 2) the new "construction material" domestic preference requirement; 3) documenting and certifying compliance with BABA requirements; and 4) the role of the Office of Management and Budget's new Made in America Office in implementing BABA, including its role in the revised waiver process.

Panel

- Lance Simmons, Texas Department of Transportation (TxDOT)
- Ryan Gaulke, Minnesota Department of Transportation (MnDOT)
- Ben Jones, Mississippi Department of Transportation (MDOT)

12:15 PM–1:45 PM

Lunch/Committee Meetings**General Law (AJL10)***Roanoke*

- Jeff Graham, Texas Department of Transportation (TxDOT)

Transit and Intermodal Transportation Law (AJL20)*Potomac G*

- Gregory Rodriguez, Stantec

Emerging Technology Law (AJL40)*Shenandoah H*

- Ellen Partridge, Shared-Use Mobility Center

Environmental Issues in Transportation Law (AJL50)*Shenandoah J*

- Edward (Ted) Boling, Perkins Coie, LLP, and Julie Wilson-McNerney, Schwabe

2:00 PM–3:30 PM

CONCURRENT SESSIONS**SESSION 3: Game Changer or Same Law, Different Day: Consumer Expectations, Liability, Regulations and Policy for AV's***James River Salons ABC*

Moderator: Alan Steinberg, California Department of Transportation (CALTRANS)

Sponsored by: Emerging Technology Law (AJL40)

Many believe that the development and advancements of Automated Vehicles (AVs), from Advanced Driver Assistance Systems to Autonomous Vehicles, are a game-changer from the traditional cars we are so accustomed to, and that consumers' lack of familiarity and potential over-reliance on "over-hyped" AV capabilities creates unprecedented safety risks. But how different really is this advancement from previous developments of vehicle technologies? What can we learn from past consumer adoption and growing pains? What are the latest trends in laws, policies, and enforcement related to automation functions?

In this session, we will hear from a range of stakeholders on how consumer experiences and expectations relate to liability, regulation, and policy considerations for AVs, including the relative responsibilities of car / technology companies; state, federal and local regulators; AV users; concerns raised by "deceptive naming or marketing" and over-reliance on technology by the consumer; as well as a discussion of what laws may need to change to unlock the future for AVs.

Human Factors and Impacts AV has on Driving Behaviors

- John L. Campbell, Exponent Engineering and Scientific

Roadway Design Issues

- Paul Carlson, Automated Roads

Industry Perspective on Regulatory and Design Needs

- Amanda Hamm, Nuro

Legal Liabilities

- Matthew W. Daus, Windels Marx

SESSION 4: Confusion and Conflation in Access Management

James River Salon D

Moderator: Jami Schmalz, City of Phoenix

Sponsored by: Eminent Domain and Land Use (AJL60)

There are increasingly shifting sands between the exercise of eminent domain and police power when it comes to access connections from private property to public roadway. The nation's roadways are among the most dangerous public facilities in the world and the causal connection between property access and crashes is well established. The confusion observed in the courtroom include a conflation of property value and business value, courts and public officials resist owning their decisions to prioritize business value over public safety, and developers are finding it much easier to shift their risk and responsibility to the public. Damages (real or imagined) awarded for supposed impacts of access management transfers taxpayer monies to private hands.

Panel

- Chris Huffman, Huffman Corridor Consultant, LLC
- Christopher Kramer, Nossaman LLP
- Stuart Samberg RK&K Consulting

3:30 PM–4:00 PM

Break

James River Foyer

4:00 PM–5:30 PM

CONCURRENT SESSIONS**SESSION 5: Combatting Human Trafficking**

James River Salons ABC

Moderator: Terri L. Parker, Missouri Department of Transportation (MoDOT)

Sponsored by: Tort and Liability and Risk Management (AJL70);

Transit and Intermodal Transportation Law (AJL20)

The role of the transportation sector including state DOT's is significant but not widely known. The panel will address legal issues and practical tools used to combat the scourge of human trafficking, related federal and state legislation, the results of a national survey of transportation employees and trafficking survivors and the training, educational materials and ideas resulting from the work of a multi-state DOT task force.

Panel

- Trayce Hockstad, University of Alabama Transportation Research Center
- Chris Baglin, United Against Slavery
- Monica Aleman-Smoot, Texas Department of Transportation (TxDOT)

SESSION 6: Multi-modal Legal Issues in High-Speed Rail Projects

James River Salon D

Moderator: Edward (Ted) Boling, Perkins Coie, LLP

Sponsored by: Environmental Issues in Transportation Law (AJL50)

The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), included an unprecedented \$170 billion for improving railroads, which could include infrastructure for high-speed rail. Although high-speed rail is in its infancy in the United States, the California High-Speed Rail Authority has about 120 miles of high-speed rail tracks under construction, and Brightline West is planning to break ground on a high-speed rail link between Las Vegas and Los Angeles. This panel will discuss emerging multi-modal legal issues in project development and environmental review for high-speed rail projects from a variety of perspectives, including that of a federal lead agency and private practice attorneys.

Panel

- Minming Wu Morri, California High-Speed Rail Authority
- Kathryn Johnson, Federal Railroad Administration (FRA)
- Michael Westermann, Virginia Passenger Rail Authority
- Julie Wilson-McNerney, Schwabe

TUESDAY, JULY 25, 2023

7:30 AM–5:00 PM

Registration

James River Foyer

7:30 AM–8:00 AM

Continental Breakfast

James River Foyer



8:00 AM–9:30 PM

CONCURRENT SESSIONS

SESSION 7: Alternatives to Fixed Price Contracts

James River Salons ABC

Moderator: Nancy Smith, Nossaman, LLP

Sponsored by: Contract Law (AJL30)

The market for large infrastructure projects has undergone numerous changes in the past several years, one of which is an increasing aversion by some contractors and service providers to the traditional fixed-price contract model. Contractors are seeking alternatives to lump sum pricing. A panel of industry experts will discuss the current state of the market for construction and service projects and the resulting impacts on contractor availability and competition. The discussion will include popular alternatives to lump-sum pricing, contractual mechanisms to mitigate the associated risks (such as contract incentives and non-traditional remedies), as well as procurement options related to contractor selection methods and alternative delivery methods involving negotiated pricing like progressive design-build and CM/GC.

Panel

- Shailendra Patel, Virginia Department of Transportation (VDOT)
- Doug Gransberg, Gransberg & Associates, Inc.
- Barbara Chomicka, Turner & Townsend
- Kenneth Beehler, WSP USA, Inc.

SESSION 8: It's Electric..., but what about the Boogie Woogie Woogie?

James River Salon D

Moderator: Greg Rodriguez, Stantec

Sponsored by: Transit and Intermodal Transportation Law (AJL20)

The "all-in" federal funding approach to support the adoption of electric vehicles (EV) has produced significant momentum around the installation of EV charging infrastructure nationally. However, guidance is still rolling out around issues like technical specifications, Buy America, use of public right-of-way, public private partnerships, and tax credits. Understanding how to proactively navigate these issues will be critical to making sure we are all dancing in step when considering the new ecosystem that electrification and other alternative fueling options provide for the transportation system.

Panel

- Michael Tubman, Lucid Motors
- Fatema Hajl-Taki, Minnesota Department of Transportation (MnDOT)
- Suzanne Goldberg, ChargePoint
- Alan Saunders, Virginia Department of Rail and Transportation

9:30 AM–10:00 AM

Break

James River Foyer

10:00 AM–11:30 AM

CONCURRENT SESSIONS

SESSION 9: Summer 2023 IIJA Update

James River Salons ABC

Moderator: Craig Gustafson, Minnesota Department of Transportation (MnDOT)

Sponsored by: General Law (AJL10)

The Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Law (BIL) presents state DOTs, MPOs, local governments, and the private sector with a once in a generation opportunity to invest in improvements to our transportation infrastructure. This session will provide an update on current developments and trends relating to the IIJA, including a review of grants already awarded. The panel will update progress made on the implementation of the new law and how the various policy initiatives of the Biden Administration are impacting that implementation, including Justice40 and other initiatives aimed at advancing environmental justice, sustainability and resilience initiatives, and more.

Panel

- Susan Binder, Cambridge Systematics, Inc.
- Joshua Root, Minnesota Department of Transportation (MnDOT)
- Angel N. Deem, Virginia Department of Transportation (VDOT)

SESSION 10: Alternative Uses of Right-of-Way

James River Salon D

Moderator: Christopher Kramer, Nossman LLC

Sponsored by: Eminent Domain and Land Use (AJL60)

Federal regulations identify uneconomic remnants as remainders of land not required for traditional transportation project uses, but with no economically viable use remaining to them and requires acquiring agencies to offer to purchase these remnants. The panel will address the challenge to public agencies to manage these remnant parcel inventories and put them to productive use.

Panel

- Nic Thornton and Lindsey Svendson, Federal Highway Administration (FHWA)
- Chris Huffman, Huffman Corridor Consultant
- Jeffrey Metcalf, Minnesota Department of Transportation (MnDOT)

11:45 PM–1:15 PM

Lunch/Committee Meetings

Contract Law (AJL30)

Shenandoah J

- April Greenhouse Weaver, Metropolitan Transit Authority of Harris County

Eminent Domain and Land Use (AJL60)

Shenandoah H

- Christopher Kramer, Nossaman LLP

Tort Liability and Risk Management (AJL70)

Roanoke

- Terri Parker, Missouri Department of Transportation (MoDOT)

1:30 PM–3:00 PM

CONCURRENT SESSIONS

SESSION 11: Post Covid Impacts to Supply Chain and Labor Challenges

James River Salons ABC

Moderator: Sid Scott, HKA

Sponsored by: Contract Law (AJL30)

The transportation construction industry is experiencing unprecedented supply chain disruptions and labor shortages, resulting in cost increases and delays to the development of transportation infrastructure projects and operation of services contracts. A panel of industry experts will discuss how various contract models traditionally address labor and materials supply and relief for contractors. The panel will also explore different legal and contractual mechanisms that agencies are employing to address both contractor and owner concerns regarding current supply chain and labor challenges. This session will provide guidance regarding legal and contractual issues that arise from these various contractual approaches, as well as applicable federal requirements.

Panel

- James Cownie, Minnesota Department of Transportation (MnDOT)
- Erin Holbrook, California Department of Transportation (Caltrans)
- Christine Ryan, Nossaman LLC
- James Harper, Federal Transit Administration (FTA)



SESSION 12: Council of Environmental Quality Interim NEPA Greenhouse Gas (GHG) Guidance and Recent Caselaw

James River Salon D

Moderator: David Miller, Nossman LLP.

Sponsored by: Environmental Issues in Transportation Law (AJL50)

In January 2023, the Council for Environmental Quality issued interim guidance on consideration of greenhouse gas emissions and climate change in the NEPA process. This interim guidance provides information regarding how federal lead agencies should categorize and analyze GHG impacts in NEPA documents and how those agencies should address infrastructure resiliency. This panel will address this interim guidance, current caselaw on GHG issues, and will provide best practices and case studies for addressing GHG emissions and climate change in NEPA documents. The panel will provide a variety of perspectives from CEQ, state DOTs (both with and without NEPA assignment), and private practice. This will be an interactive session and will include a robust Q&A portion.

Panel

- Lemuel Thomas, Council on Environmental Quality
- Sierra Redding, Texas Department of Transportation (TxDOT)
- Chris Regan, Interstate Bridge Replace Program

3:00 PM–3:30 PM

Break

James River Foyer

3:30 PM–5:00 PM

CONCURRENT SESSIONS

SESSION 13: Rail Safety: Breaking News

James River Salons ABC

Moderator: Monica Aleman Smoot, Texas Department of Transportation (TxDOT)

Sponsored by: Tort and Liability and Risk Management (AJL70); General Law (AJL10)

Rail safety and the potentially wide- ranging consequences of matters such as derailments, the transport of hazardous materials and long trains blocking highway crossings are becoming increasingly prominent in today's news. The panel will present a discussion of caselaw and statutory development; a case study of a BNSF crash on railroad and MoDOT property that resulted in a \$20 million verdict against the railroad, the Rail Crossing Elimination Program and the recent East Palestine derailment including ensuing legislative proposals.

Panel

- Angela Forsythe, Minnesota Department of Transportation (MnDOT)
- Terri L. Parker, Missouri Department of Transportation (MoDOT)
- Stephen Gordon, American Railroad Association
- Brett Jortland, Federal Railroad Administration (FRA)

SESSION 14: Show Me the Money [or Riders]!

James River Salon D

Moderator: Kathleen Kraft, Thompson Coburn

Sponsored by: Transit and Intermodal Transportation Law (AJL20)

Transit agencies are facing a financial cliff as COVID relief funding expires. Some agencies are trying to fill the gap through increased fare enforcement, while others are going in the opposite direction by eliminating fares. What are the legal and financial concerns surrounding both approaches, and is there a reasonable middle ground? What considerations are being explored to support a more adaptable and demand-responsive system?

Panel

- Bonnie Ashley, City of Richmond City Attorney's Office
- Alvaro Villagran, Shared Use Mobility Center
- Daniel Wagner, Virginia Department of Rail and Public Transportation

WEDNESDAY, JULY 26, 2023

7:30 AM–10:00 AM

Registration

James River Foyer

7:30 AM–8:00 AM

Continental Breakfast

James River Foyer

8:00 AM–9:30 AM

CONCURRENT SESSIONS**SESSION 15: The Realities of ROW for Project Managers**

James River Salons ABC

Moderator: Christopher Kramer, Nossman LLP

Sponsored by: Eminent Domain and Land Use (AJL60)

The right-of-way phase can prove to be a profound “gotcha” for transportation projects. This panel will look at the regulatory compliance implications of the

phenomenon known as “The Letting Date Squeeze” which often results in the right-of-way phase being shoe-horned into the project development schedule without sufficient consideration of the realities of required activities such as 90-day notices, and the inability to make written offers until offers of just compensation are approved and environmental clearances are in hand.

Panel

- Bernadette M. Duran-Brown, Nossaman, LLP
- Jami Schmalz, City of Phoenix
- Chris Huffman, Huffman Corridor Consulting, LLC

SESSION 16: Do We Need the Feds? An Exploration of the Roles of Federal, State, Local, and Industry Actors in Enabling the Future of Mobility

James River Salon D

Moderator: Melody Drummond Hansen, BakerHostetler

Sponsored by: Emerging Technology Law (AJL40)

Much is said about the need for federal regulation to advance new technologies such as automated and connected vehicles. But the question is “Do we really need the Feds, and if so, when?” Federal regulation is a slow, deliberate process, and states, localities, and industry have continued to advance testing and deployment of new transportation technologies without significant federal guidance in key areas including safety standards, testing procedures, and data security and privacy. At the same time, federal agencies have made progress in knowledge-building and hiring talent to match future needs.

In this session, we will hear from stakeholders across the industry to revisit the history of traditional roles of federal, state, and local governments in regulating transportation; discuss progress made in defining regulatory roles including for automated and connected vehicles; probe the relative strengths and weaknesses of different agencies to solve different problems; and consider how legal concepts such as “preemption” and “sovereign immunity,” and limits on funding sources impact advancing new technologies. We also will discuss the roles that industry actors and standards bodies have played in advancing best practices for safety, testing, and data security and privacy. And finally, we will explore what regulatory and legal changes may better facilitate cooperation in the future.

Panel

- Kristine White, ITS America
- Timothy Haile, Contra Costa Transportation Authority (CCTA)
- Charity Allen, Aurora

9:30 AM–10:00 AM

Break

James River Foyer

10:00 AM–Noon

SESSION 17-ETHICS SESSION: Civility and Professional Responsibility: Nice Guys (and Gals) Can Finish First

James River Salons ABC

Judith S. Kaleta, United States Department of Transportation (USDOT)

Bruce Smith, Apperson Crump

Sponsored by: Legal Resources Section (AJL00)

For years, we have heard complaints about colleagues and opposing counsel who take the adversarial nature of the legal system to extremes. Whether it is enduring “Rambo” style litigation tactics from the other side, dealing with abusive written or oral discovery practices, or seeing litigants and court personnel (even judges) being treated with intemperance or hostility, we probably have all experienced the anxiety-inducing effects that incivility in our profession creates. The Model Rules, rules of civil procedure, and numerous court cases interpreting these rules provide guidance on how civility and professional responsibility overlap. In this way, maintaining a professional and civil demeanor in carrying out our duties as officers of the court clearly goes beyond living by the “Golden Rule.” This session will discuss how the Model Rules speak to civility. We will review the many examples of “civility codes” and oaths of admission to practice law around the country that address expected standards of conduct. We will also provide examples of how courts have increasingly implemented severe consequences in an effort to promote civility and to punish bad behavior.

Finally, we will briefly update attendees on recent actions taken by the courts and disciplinary boards stemming from the 2020 presidential election challenges.

Noon–12:15 PM

Closing Remarks & Adjournment

James River Salons ABC

Craig Gustafson, Minnesota Department of Transportation (MnDOT)

Chair: Legal Resources Section (AJL00)

Robert Shea, Transportation Research Board (TRB)

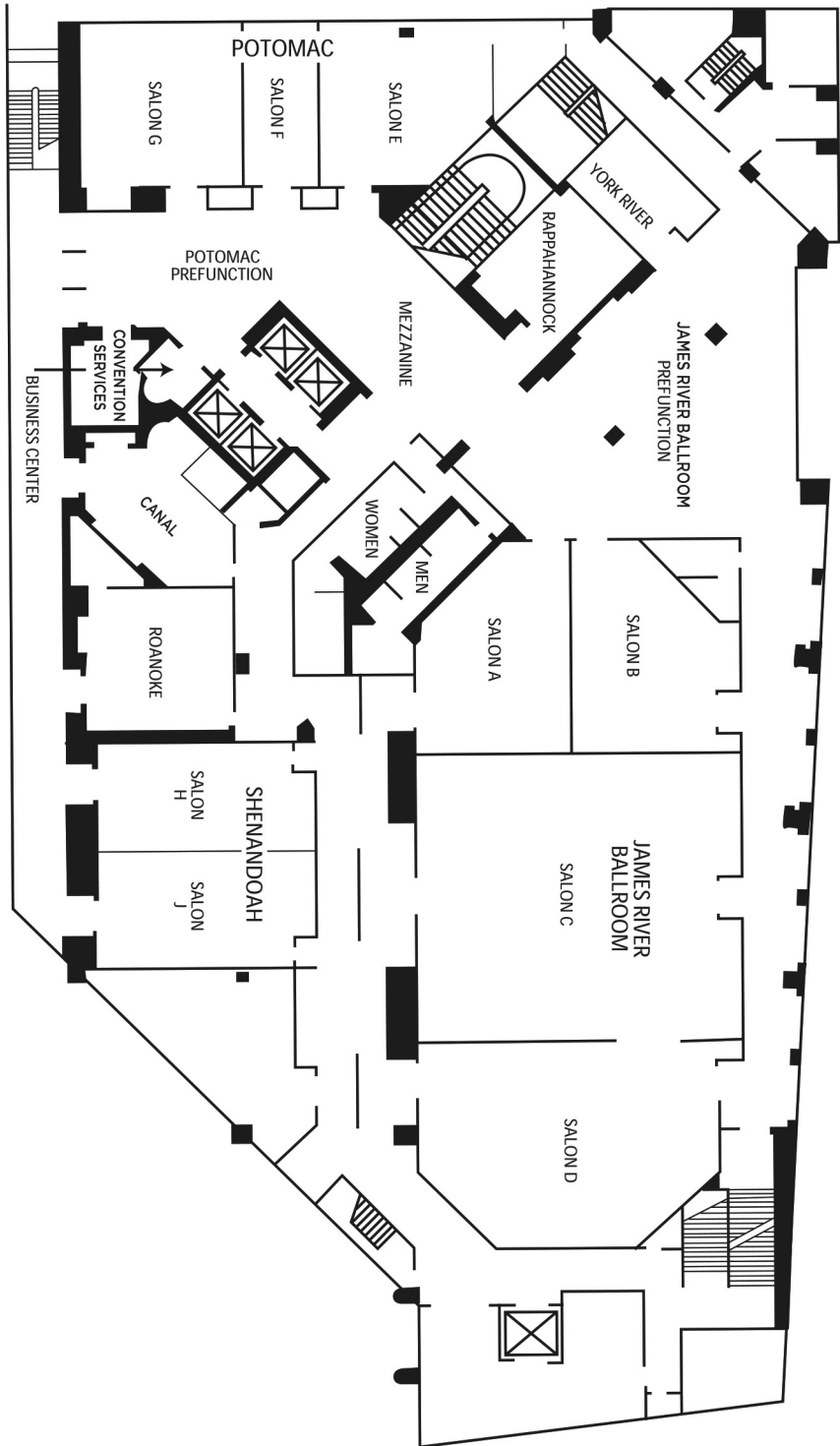
12:45 PM–2:30 PM

Section Council Meeting (By Invitation Only)

Roanoke

FLOOR PLAN

Omni
Richmond
Hotel
Meeting
Space



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