



An Interview with Paul M. Geier

Assistant General Counsel for Litigation and Enforcement for the U.S. Department of Transportation

Paul M. Geier has been the Assistant General Counsel for Litigation and Enforcement for the U.S. Department of Transportation for the past 30 years. He is now also the DOT's Acting Assistant General Counsel for Operations. His responsibilities have included developing DOT's positions in U.S. Supreme Court and lower federal court cases dealing with constitutional and administrative law issues and regulatory challenges.

A&SL: Tell us about your background and how you came to work at DOT.

PMG: Just very briefly, I grew up in the Washington, D.C., area, so I consider myself a D.C. native. I went away to college at Bucknell University in Lewisburg, Pennsylvania, and then to law school at Vanderbilt University in Nashville, Tennessee.

My very lengthy federal career began in Seattle, Washington, as the regional counsel for Region X of the Community Services Administration, a successor agency to the Office of Economic Opportunity. In that capacity, I provided advice on grants, financial audits, labor-management relations, personnel decisions, and litigation, among many issues.

After several years in that position, I moved back to D.C. to take a position with the Department of Energy (DOE) in the Office of Special Counsel, a newly formed office that was responsible for administrative and judicial enforcement of the oil pricing and allocation regulations against the 34 largest petroleum refiners. I held a number of positions in that office, supervising administrative and judicial litigation.

While at DOE, I completed an SES executive development program that led me to apply for and accept the DOT Assistant General Counsel for Litigation position, which I have held since 1990. Several years ago, my office also took on the responsibility of overseeing DOT's enforcement work, coordinating with attorneys and program offices throughout the Department and sharing information on recent developments and practices of our enforcement programs. Hence, my title is "Assistant General Counsel for Litigation and Enforcement." Since March 2020, I have also been the Acting Assistant General Counsel for Operations.

A&SL: You have had a long and successful career at DOT, earning the respect of your colleagues in both government and the private sector. What was

your career path like, and what about the department or the work engaged your interest to keep you at DOT?

PMG: I have always found the work of the Department, and particularly its litigation, to be both challenging and interesting. The cases for which my office has been responsible, including numerous Supreme Court matters, have covered a wide range of constitutional and administrative law issues that I never would have imagined being a part of my DOT experience. In addition, and perhaps most importantly, I have had the opportunity to work with an amazing group of lawyers and agency officials at DOT. I think that good colleagues and a positive working environment, as well as interesting work, have played a major role in my remaining at the Department for these many years. After 30 years at the Department, I still come to work every day enthusiastic about what I do and the people with whom I work.

A&SL: What have been the biggest challenges for you representing such a large and diverse agency?

PMG: The biggest challenge for me has been the need to gain a working knowledge of the statutory and regulatory law that so often is at issue in our litigation. The Department and its various operating administrations have different statutory authorities, which I thought it was necessary to master if I was to lead an office responsible for managing the Department's litigation. Although I had an extensive litigation background, I did not have transportation experience or expertise. So, for the first several years of my time at DOT, I set out to learn the Department's programs and to establish working relationships with the lawyers in all of the DOT operating administrations. Even today, maintaining strong, collegial working relationships is a critical aspect of my ability, and that of my staff, to function effectively in managing the Department's litigation and my enforcement responsibilities.

A&SL: Do you have any thoughts about the state of the federal administrative state? From your perspective defending agency actions, what, if any, changes to the Administrative Procedure Act would you recommend and why?

PMG: The federal administrative state is, to some degree, always in a state of flux and subject to many

new developments from judicial decisions, legislative enactments, and agency rulemaking. One of the challenges in my position is to keep current on legal developments from across the federal government that may impact DOT and its operating administrations.

While I don't have a recommendation for changes to the APA, I do think that direct judicial review in the courts of appeals from agency rulemaking and adjudication is preferable in APA record review cases. Most of the Department's agencies have such direct review provisions, and I think it has been very helpful in expediting the judicial review process.

A&SL: What have been the most interesting and/or important cases you have handled, and what was their impact on DOT and the regulated industries at issue?

PMG: The most interesting cases I have worked on have been the Supreme Court cases involving preemption, primarily those under the Airline Deregulation Act (ADA) and its motor carrier deregulation companion, the Federal Aviation Administration Authorization Act (FAAAA). Those cases include *Morales v. TWA*, *American Airlines v. Wolens*, *Northwest, Inc. v. Ginsberg*, *Dan's City Used Cars v. Pelkey*, *Rowe v. N.H. Motor Transport Association*, and *American Trucking Associations v. Los Angeles*. These cases have been important in establishing the framework for air and motor carrier deregulation. Beginning with the *Morales* decision in 1992, the Court set the broad parameters and the limitations of these statutes. In my view, these decisions have been effective in ensuring that, as Congress intended, market forces continue to play the major role in carrier decisions and that states don't attempt to reregulate in the absence of federal regulation.

My work on interesting preemption matters has not been limited to the ADA and FAAAA. The Department also has had significant preemption cases in the Supreme Court and in the lower courts arising under statutes governing the Federal Railroad Administration; National Highway Traffic Safety Administration; and the Coast Guard, when it was part of DOT. By contrast to the aviation and motor carrier cases, these preemption cases have involved the potential conflict between the objectives of agency regulation and those of private tort litigation.

A&SL: What advice do you have for younger lawyers and students interested in a career in transportation law, particularly those interested in working for DOT, one of the modal administrations, or another federal agency?

PMG: I would encourage students to take a broad variety of courses in law school, including those on administrative law and related subjects, as well as the basics on torts, contracts, property, and civil procedure, which are often mandatory courses. It's surprising how often basic legal issues arise in administrative

law practice that require knowledge of contracts, real property law, or other core legal principles. I would also encourage students and younger lawyers to seek out internships, judicial clerkships, or state or federal administrative law experiences to get a better understanding of these areas. And I certainly encourage people to develop their writing and public speaking skills, the latter being especially important in many contexts for effective advocacy and representation.

A&SL: You have experienced a number of administration transitions and worked under a number of general counsels at DOT. In general, how does a transition affect your work, and do you see any particular issues for the current transition?

PMG: Transitions often follow familiar patterns. At the end of an administration, there is typically a big push to finish work that is viewed as important and necessary, leading to a flurry of activity in the weeks and months ahead of Inauguration Day, sometimes even on the last days and hours of the administration. And the new administration often begins with an array of new ideas and programs. Our task then is to begin working with the new noncareer team and to assist them in moving forward with new programs while maintaining the fundamental programs and functions of DOT. All of this, of course, makes for a busy time for career staff. Furthermore, these changes in policy, rulemaking, or other decisions often lead to additional litigation, which my office and the affected DOT operating administrations defend in coordination with the Department of Justice.

A&SL: What advice do you have for industry lawyers interested in getting your attention, and your views, about a particular issue or matter affecting their clients? In general, what makes an issue interesting, and what persuades you to engage in a matter?

PMG: I think the Department is always prepared to meet with regulated parties and other stakeholders to discuss various issues that arise under our statutes and regulations. When it comes to DOT's involvement in litigation, that question is a bit more complicated because we do not decide on our own whether we should get involved in litigation to which we are not a party. That decision is ultimately made by the Justice Department. Typically, when DOT has become involved in a case to which it is not a party, it is because the case raises broad policy or legal questions that may impact major segments of an industry, or that are extensions of cases in which we have previously participated.

A&SL: On the flip side, what are the mistakes industry advocates have made that they should avoid when trying to get the Department to act on a matter?

PMG: To answer the question from a somewhat different perspective, I would recommend that industry

advocates, like other stakeholders that work with or appear before DOT, ensure that they have a solid foundation in the governing law and the positions that the Department has taken in previous cases and administrative proceedings. Furthermore, it is always helpful to provide DOT decision makers with a concrete understanding of the real-world implications of a matter in litigation, and the bearing of the litigation upon DOT's policies or programs.

A&SL: When we finally reach a “normal” post-pandemic state, what are you looking forward to doing in your free time?

PMG: I'd like to get back to seeing friends and family, traveling a bit, running regularly, going out to eat at a restaurant and seeing a movie, and just relaxing and taking it easy.