

FBA Civil Rights Étouffée CLE



**Federal Bar
Association**

Civil Rights Law Section

Morning Panels

MORNING SESSION 1 • 9:00-10:15AM

PLENARY

PANEL 1

Immigration & Civil Rights: An Exploration of Issues

This panel will address key issues at the intersection of civil rights and immigration law. We will discuss the broad nature of the authority of the Department of Homeland Security (DHS) to interrogate, detain and remove non-citizens and how the agency exercises its authority. We will discuss a number of hot topics, including the recent Executive Orders and how they impact the civil rights of non-citizens. Other topics will include the now-defunct NSEERS program and the prospect of a so-called Muslim registry; Fourth Amendment issues and motions to suppress; immigration detainers; and issues affecting immigrant children, including the right to an education. Finally, the Immigration Section Chief of the Office of Civil Rights and Civil Liberties (CRCL) at the U.S. Department of Homeland Security will discuss her office and address how immigrants and their advocates can best utilize it as a resource.

MODERATOR: Jeffrey A. Feinbloom, Feinbloom Bertisch LLP, NYC

PANEL: Kathleen Gasparian, Gasparian Immigration, NOLA; Hiroko Kusuda, Professor of Law, Loyola University of New Orleans College of Law, NOLA; Laura Olson, U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties, Immigration Section Chief, Washington, D.C.

MORNING SESSION 2 • 10:20-11:20AM BREAKOUT

PANEL 2A

Pre-Trial detainees v. Post-Conviction prisoners: did the Supreme Court Decision in *Kingsley* mark a sea change or is it a distinction without a difference?

In *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), the Supreme Court held that a pretrial detainee may prevail on an excessive force claim if he or she shows that the force used was objectively unreasonable, regardless of whether the officer had a subjective intent to cause the detainee harm. In reaching this decision, the Court granted greater protections to pretrial detainees under the 14th Amendment's Due Process Clause than convicted prisoners enjoy under the Eighth Amendment. The Eighth Amendment still requires proof of a subjective intent to cause harm before a violation will be found. The Ninth Circuit has interpreted the *Kingsley* decision to apply to all claims brought by pretrial detainees, not just those based on allegations of excessive force. This panel will explore the ramifications of *Kingsley* and query whether other circuits are likely to follow the Ninth Circuit's expansive reading of *Kingsley*. If so, what will that mean for jail litigation?

MODERATOR: Stephen Haedicke, Law Office of Stephen Haedicke, NOLA

PANEL: Liz Cumming, Law Offices of Elizabeth Cumming, NOLA; Jim Mullaly, Martiny & Associates, NOLA; Theresa Powell, Heyl, Roster, Voelker & Allen, PC, Springfield.

PANEL 2B

An Examination of the Use of Federal Prohibitions on Medical Marijuana and Interstate Traveling with Medicinal Marijuana

The panelists on the marijuana panel will present an overall view of current legal status regarding the growth, production, distribution, and use of marijuana for medicinal and adult use in the new environment across the many states and their potential interaction with federal laws. Specific State laws that have legalized marijuana to various degrees or manners and their practical implications before, and at, trial will also be discussed.

MODERATOR: Bonnie Kift, Law Office of Bonnie Kift, Ligonier, PA

PANEL: Jerry Goldman, Anderson Kill & Olick, NYC; Sean McAllister, McAllister Garfield, PC, Denver, CO.

MORNING SESSION 3 • 11:30AM-12:30PM BREAKOUT

PANEL 3A

Use of Force Continuum: Comparing Federal and State Standards

This panel will discuss how local (non-federal) police officers are trained in terms of when it is appropriate to use force, how much force is authorized and the discretion given to law enforcement to make decisions. We will discuss the application of implementing law enforcement's understanding of the Use of Force Continuum to compare and contrast relevant cases that address the Court's understanding of reasonableness.

MODERATOR: Theresa Powell, Heyl, Roster, Voelker & Allen, PC, Springfield

PANEL: Gary Bizal, Pierce & Bizal, NOLA; Susan Hutson, City of New Orleans Independent Police Monitor, NOLA; Paul Noel, Commander, New Orleans Police Department, NOLA.

PANEL 3B

Disparate Impact Claims: Recent Case History and Application for Fair Housing Claims

On June 25, 2015, the Supreme Court, by a five-to-four margin, ruled that a disparate impact claim was cognizable under the Fair Housing Act. While upholding disparate impact theory, the Court imposed significant limitations on its application in practice "to protect potential defendants against abusive disparate-impact claims." In particular, the Court held that a racial imbalance, without more, cannot sustain a claim, and directed lower courts to "examine with care" the claims at the pleadings stage. This panel will address the history of this case and other laws affecting housing discrimination claims and how they now form the basis for Fair Housing claims and defenses to them.

MODERATOR: Joy Willig, Jones Walker, NYC

PANEL: Cashauna Hill, Executive Director, Greater New Orleans Fair Housing Action Center, NOLA; Antoinette "Toni" Jackson, Jones Walker, Houston; Laura Tuggle, Executive Director, Southeast Louisiana Legal Services, NOLA.

LUNCH • 12:30-1:45PM KEYNOTE ADDRESS

KEYNOTE

The Hon. Kenneth Polite, former U.S. Attorney for the Eastern District of Louisiana.

Afternoon Panels

AFTERNOON SESSION 4 • 1:45-2:55PM

PLENARY

PANEL 4

Impact Litigation and Social Justice Advocates

Class-action lawsuits are an important tool to advance civil rights. This panel will focus on the value of impact litigation to advance social justice and civil rights. Attorneys from various jurisdictions will share their experiences in bringing impact litigation related to prison conditions, racial profiling, and other targeted and vulnerable populations. They discuss strategies to continue to use impact litigation as a tool to advance civil rights.

MODERATOR: The Honorable Ivan L.R. Lemelle, US District Court Judge for the Eastern District of Louisiana

PANEL: Elissa Johnson, Southern Poverty Law Center, Jackson, MS; Tracie Washington, Professor, Dillard University, & President and CEO, Louisiana Justice Institute, NOLA; Stanley Young, Covington & Burling, Silicon Valley.

AFTERNOON SESSION 5 • 3:00-4:00PM

BREAKOUT

PANEL 5A

From Training to the Streets: What are the Standards for Street Protest and First Amendment Policing

From Occupy Wall Street to Black Lives Matter to Women's Marches and Anti-Trump protest, cities and towns in America have seen an increase in street protest over the past decade, and since January 20, there are almost daily street protests in frequency and volume of participants never before seen in our history. The panel will discuss how criminal laws apply when First Amendment activity is in play, how municipalities can properly train our police forces to properly apply such standards and how protestors and police can work better to ensure expressive speech activities are given the proper constitutional safeguards.

MODERATOR: The Honorable Richard Bourgeois, US District Court Magistrate Judge for the Middle District of Louisiana

PANEL: Tara Johnston, counsel for Baton Rouge Sheriff, Erlingson Banks, Baton Rouge; Eileen Rosen, counsel for Chicago Law Dept., Rock Fusco & Connelly, Chicago; Wylie Stecklow, counsel for Occupy Wall Street, Stecklow & Thompson, NYC.

PANEL 5B

For-Profit Policing: Fines, Fees, and Forfeitures

Reform of the American justice system has captured the attention of the American public. While the discussion has focused on sentencing policies, police accountability, and reentry issues, there is a less-examined, but equally significant issue: Increasingly, our justice system has come to rely on the criminal justice system as a means to create revenue. This panel examines the problems of for-profit policing and the alarming trend of using fines, fees, and forfeitures to fund law-enforcement agencies.

MODERATOR: Glen Downey, Law Offices of Glen Downey, Des Moines

PANEL: Alanah Odoms Hebert, Deputy General Counsel, Special Counsel to Chief Justice Bernette J. Johnson, Louisiana Supreme Court, NOLA; Darpana Sheth, Sr. Attorney, Institute for Justice, Arlington, VA; Sara Zampierin, Sr. Staff Attorney, Southern Poverty Law Center, Montgomery, AL.



KEYNOTE SPEAKER

We are very honored to welcome our luncheon keynote speaker:

The Hon. Kenneth Polite, former U.S. Attorney for the Eastern District of Louisiana.

AFTERNOON SESSION 6 • 4:10-5:10PM

BREAKOUT

PANEL 6A

“Religious Freedom” vs. LGBT Equality: Legislative Attempts to Empower Anti-LGBT Discrimination

Laws have been passed or proposed on the state and federal level which privilege anti-LGBT religious beliefs and give legal protection to anti-LGBT discrimination. Under the so-called First Amendment Defense Act introduced in the House of Representatives (HR 2802), federal employees or contractors could refuse service to LGBT citizens or terminate LGBT employees if they professed a religious belief that LGBT people should not be permitted to marry, or that sexual relations outside heterosexual marriage are improper. HR 2802 ironically defines “discriminatory action” as any action taken by the government against a person who discriminates against LGBT people. In 2016, Mississippi passed a nearly identical law: HB 1523. A federal court issued a preliminary injunction enjoining its enforcement. Even if HB 1523 is struck down, it is unlikely to be the last word in the use of claimed “religious freedom” as a means to oppose LGBT equality. This panel, which includes attorneys taking part in the HB 1523 litigation, will discuss the legal issues raised by HB 1523, and will look forward to what might come next.

MODERATOR: David Thompson, Stecklow & Thompson, NYC

PANEL: J. Dalton Courson, Stone Pigman, NOLA; Robert McDuff, McDuff & Byrd, Jackson, MS; Alysson Leigh Mills, Fishman Haygood, NOLA.

PANEL 6B

Charters, Cybers and Special Education: Old Wine in New (and Leaky) Bottle

The Individuals with Disabilities Education Act (IDEA) has been around in its various forms for more than forty years. It guarantees a free, appropriate public education to students with disabilities, and that they will be educated to the maximum extent appropriate with their non-disabled peers. The IDEA's core principles, including full access to education, individualized evaluation and prescriptive program development, full parental participation, prior written notice, and parents' opportunity to challenge educational decisions for students with disabilities, have had a profound impact on the lives of children and their families. How will the growing emphasis on school choice initiatives, including charter schools, cyber-charter schools, and school voucher programs, affect those lives? In this panel, experienced counsel from both sides, representing parents and school districts, will explore the foundations of special education law and the impact of those initiatives on access, quality and accountability for today's special education students.

MODERATOR: Ken Gelburd, Esq., PA

PANEL: Jaimmé Collins, Adams and Reese LLP, NOLA; Eden Heilman, Managing Attorney, Southern Poverty Law Center, NOLA; Caryl Andrea Oberman, PA.