

22nd Annual

Section 1983: Civil Rights Litigation

Co-sponsored by Suffolk University Law School, Center for Advanced Legal Studies

Thursday-Friday, April 22-23, 2004

Georgetown University Law Center, Washington, DC • 10.0 CLE credits

About the Seminar

This twenty-second annual seminar brings back our highest-rated presenters from 2003 and keeps you updated on the latest cases, trends and strategies affecting Section 1983 litigation. As always, the sessions combine an analytical approach to problems with practical advice about how to solve them. The presentations are balanced so both plaintiff and defense attorneys obtain usable tips and a greater appreciation of the "other side's" strategies.

■ National authority, Professor Erwin Chemerinsky, leads off with his popular and fast-paced review of recent and pending Supreme Court cases. He will review all the critical areas of litigation, including equal protection and fundamental rights, a number of important Fourth Amendment issues before the Court, federalism, elections and political processes, and religion's role under the constitution.

■ Litigator and professor, David Rudovsky will explore the most recent developments in qualified immunity. Have *Saucier v. Katz* and *Hope v. Pelzer* provided guidance in determining when the law is "clearly established?" How does qualified immunity apply in Fourth Amendment excessive force claims under *Saucier*? What is the relationship of the culpability standard for the substantive constitutional claim to the qualified immunity defense?

■ Professor Karen Blum will repeat our well-received "Nuts & Bolts" session on Section 1983 litigation, reviewing the most common mistakes made by litigators. Professor Blum will review the most important issues to be analyzed, whether you are representing the plaintiff or defendant. Included in her analysis will be a review of the Supreme Court's latest word on heightened pleading in *Swierkewicz*.

(continued)

PRISON LITIGATION

Wednesday, April 21, 2004 • 5.5 CLE credits

The 2003 one-day program on Police Misconduct Litigation proved to be so popular that we have retained that format and are introducing a new one-day seminar focusing on Prison Litigation. In this special session, you will be able to

analyze the most important issues affecting prison litigation and obtain practical tips on dealing with the most common problems, whether you represent plaintiffs or defendants.

During this program, you will be able to:

- Review recent developments surrounding the Prison Litigation Reform Act
- Analyze the Fourth Amendment rights of pre-trial, pre- and post-arraignment detainees

- Learn the keys to litigating prison conditions and excessive force claims
- Answer the critical questions about federal Habeas Corpus in light of the AEDPA

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PRISON LITIGATION

Wednesday, April 21, 2004 • 5.5 CLE credits

AGENDA:

8:30-8:50 am

Registration and Continental Breakfast

8:50-9:00 am

Welcome

9:00-10:15 am

Recent Developments in the Prison Litigation Reform Act *Tamara Serwer Caldas*

- Pleading and proving exhaustion of administrative remedies: e.g. When is a grievance procedure “available” for purposes of the PLRA?
- Special problems with litigating injunctive cases under the PLRA: e.g. When and how to fight termination of a consent order and dealing with the 90-day limit on preliminary injunctions
- Restrictions on remedies and attorneys’ fees: What can you expect from a consent order? What relief should you expect from a federal judge? What are the limitations on attorneys’ fees?
- Meeting the “physical injury” requirement: When is an injury physical enough? Are there some constitutional violations that do not require proof of physical injury to survive the PLRA?
- What to tell the pro se litigant: Navigating the limitations on in forma pauperis suits; dismissal of pro se lawsuits

10:15-10:30 am

Refreshment Break

PROGRAM LOCATION:

Georgetown University Law Center
Moot Courtroom
600 New Jersey Avenue, NW
Washington, DC 20001

IMPORTANT INFORMATION:

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10:30-11:45 am

Fourth Amendment Rights of Pre-Trial, Pre- and Post-Arrest Detainees

Howard Friedman

Honorable Robert C. Rufo

- Looking for contraband: How far can police/corrections officials go?
- Application of the Fourth Amendment to the custodial “lock-up,” jail and prison environments
- Review of permissible scope of searches of pre- and post-arrest detainees
- Examination of current policies and procedures relating to searches of misdemeanor-arrestees and individuals charged with felonies
- Class action challenges to strip search policies at jails and detention facilities
- When is a search to be considered a “strip search?”
- Class action issues
- Damages
- The effect of the PLRA on challenges to strip search policies

11:45 am-1:15 pm

Lunch: on your own

1:15-2:30 pm

Litigating Prison Conditions Claims and Excessive Force Claims

Karen M. Blum (Moderator)

Howard Friedman

David Rudovsky

Honorable Robert C. Rufo

- Constitutional standards established by the Supreme Court: Convicted prisoners, pre-trial detainees; conditions claims v. excessive force claims
- When do you have a “conditions” claim?
- Medical needs claims
- Failure to protect claims
- Establishing or defending against a claim of “deliberate indifference”
- Applicability of qualified immunity to claims of “deliberate indifference” or “malicious and sadistic” conduct

2:30-2:45 pm

Refreshment Break

2:45-4:00 pm

Federal Habeas Corpus in the Aftermath of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)

Ira P. Robbins

- When does the 1-year limitations period start and stop running?
- How can a state prisoner satisfy the exhaustion-of-state-judicial-remedies doctrine?
- What does it mean for a state court application of federal law to be “wrong but not unreasonably wrong”?
- When will a second or successive habeas corpus petition be barred from review?
- Other developments from the Supreme Court’s 2003-2004 Term

4:00-4:30 pm

Questions and Answers

4:30 pm

Adjourn

ANNUAL REVIEW OF CRIMINAL PROCEDURE

The Annual Review of Criminal Procedure (also known as the Criminal Procedure Project) has been hailed as “the most important and widely used law review publication in the U.S.” The Annual Review provides readers with an objective, concise, and accurate overview of criminal procedure in the Supreme Court and each of the 12 Circuit Courts. Each year the book is updated to reflect recent cases illustrating the points of law for each topic. It is a first stop for legal research, an indispensable courtroom resource, and perfect for unanticipated courtroom issues. Designed to be practical and easy to navigate, the Annual Review is an invaluable tool used by judges, defense attorneys, and prosecutors alike.

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Room Rate: \$209/single or double

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MONEY-BACK GUARANTEE:

We are confident that you will leave this conference with more than enough ideas and insights to make your investment pay off. However, if you feel you have not received your money's worth by the end of the program, simply contact a member of our registration team at the conference or call (202) 662-9890 and we will process a 100% refund of your registration fee!

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PROGRAM AGENDA — SECTION 1983: CIVIL RIGHTS LITIGATION 2004

THURSDAY, APRIL 22

8:15-8:50 am

Registration and Continental Breakfast

8:50-9:00 am

Welcome

9:00-10:30 am

Supreme Court Review: A Review of Recent and Pending Supreme Court Cases Over the Last Year

Erwin Chemerinsky

- Equal protection and fundamental rights:
 - The constitutionality of affirmative action in colleges and universities
 - The unconstitutionality of state laws prohibiting private, consensual, homosexual activity
- Police behavior:
 - How specific must a search warrant be?
 - May police arrest a person for refusing to identify himself or herself?
 - May police arrest all in a car in which contraband is found?
 - How long must police wait before knocking and announcing prior to searching a dwelling?
- Federalism:
 - The ability to sue state governments under federal statutes such as the Family and Medical Leave Act and Title II of the ADA
- Elections and the political process:
 - Campaign finance reform and whether the Bipartisan Campaign Finance Reform Act of 2002 violates the First Amendment
 - Does partisan gerrymandering deny equal protection?
- Religion and the Constitution:
 - Can a state prevent its scholarship funds from being used by a student studying theology at a religiously affiliated college?
 - Is it unconstitutional to include the words "under God" in the Pledge of Allegiance in public schools?

10:30-10:45 am

Refreshment Break

10:45-11:45 am

Qualified Immunity: Recent Developments

David Rudovsky

- Litigating the issue of "What is clearly established?" in the wake of *Saucier v. Katz* and *Hope v. Pelzer*
- Fourth Amendment claims and the *Saucier* analysis
- The relationship of the culpability standard for the substantive constitutional claim to the qualified immunity defense
- Procedural and appellate issues in the litigation of the qualified immunity defense

11:45 am-12:30 pm

Nuts and Bolts of Section 1983 Litigation: Mistakes You Don't Want to Make!

Karen M. Blum

- When is conduct "under color of" state law?
- Importance of distinguishing between individual vs. official capacity suits
- Supervisory vs. municipal liability claims
- No exhaustion, but watch out for claims under PLRA and procedural due process claims
- No state-of-mind required by Section 1983
- Suing state officials
- Heightened pleading: Supreme Court's latest word in *Swierkiewicz*

12:30-2:00 pm

Lunch: on your own

2:00-3:00 pm

Public Employee Constitutional Claims J. Michael McGuinness

- Investigation, discovery and trial issues in First Amendment retaliation litigation
- Public concern, interest balancing & causation tests
- How to prove and defend against retaliation claims
- Free association and privacy claims
- New Equal Protection Doctrine

3:00-3:15 pm

Refreshment Break

3:15-4:15 pm

Policy and Training Issues in Police Misconduct Cases: A "Reality Check"

Jack Ryan

- The realities of police selection and hiring
- Training issues and the theory of conditioned responses
- Thinking outside the box: An essential element of proper police training
- The impact of training on police conduct
- Formulation of police policy
- Policy issues relating to police conduct

4:15-4:30 pm

Questions and Answers

4:30-5:30 pm

Networking Cocktail Reception

PROGRAM LOCATION:

Georgetown University Law Center
Moot Courtroom
600 New Jersey Avenue, NW
Washington, DC 20001

IMPORTANT INFORMATION:

All visitors to the Law Center must enter through the 2nd Street entrance to the building.

FRIDAY, APRIL 23

8:30-9:45 am

Municipal Liability Under Section 1983

Karen M. Blum

- Official policy: Whose policy is it?
- Recent custom and usage cases: Importance of actual or constructive notice of policymaker
- Attribution of decisions of final policymakers: Whose policymaker is it?
- Liability for failure to screen, train, supervise, discipline: Post-Bryan County developments
- Substantive due process claims and municipal liability: Can the city be held liable absent employee liability?
- State-created danger cases

9:45-10:00 am

Refreshment Break

10:00-11:00 am

Causes of Action Against Police Officers

Michael A. Avery

- Unreasonable seizures of unreasonable people
- Use of deadly force and bystander shootings
- Police failures to disclose exculpatory evidence
- Coercive interrogation after *Chavez*

11:00-11:15 am

Questions and Answers

11:15-11:30 am

Refreshment Break

11:30 am-12:30 pm

Section 1988 Attorneys' Fees In a New Millennium

Gerald M. Birnberg

- What *Buckhannon Bd. & Care Homes v. W.Va.* means for civil rights practitioners
- What is a "prevailing party" after *Buckhannon*?
- Practical tips for plaintiffs and defendants in attorney's fees litigation

RECEIVE 10.0 CLE CREDITS

CLE CREDITS: 10.0 CLE credits (for states based on a 60 minute hour)

Accreditation has been or will be requested for this program from states with mandatory Continuing Legal Education requirements: *Section 1983: Civil Rights Litigation*, 10.0 CLE hours, with 0 hours legal ethics, and *Prison Litigation*, 5.5 CLE hours, with 0 hours legal ethics. Georgetown CLE is an accredited CLE provider in most MCLE states.

Georgetown CLE is a State Bar of California approved MCLE provider. Georgetown CLE has been certified by the New York State CLE Board as an Accredited Provider of continuing legal education programs. This transitional CLE program has been approved for a maximum of 12.0 credit hours, of which 0 credit hours may be applied toward the skills requirement, 0 credit hours towards the ethics requirement and 12.0 credit hours towards the professional practice requirement in the state of New York.

Georgetown CLE now has select online CLE courses. For more information, visit our website at www.georgetowncle.org

12:30-1:15 pm

View From the Bench

Honorable Ellen Segal Huvelle

- Qualified immunity: when should it be raised?
- Interlocutory appeals from the view of the trial judge
- Impact of *Saucier* on judge's role in analyzing qualified immunity in excessive force cases
- When should litigants employ experts in Section 1983 litigation?
- Some "do's" and "don'ts" from a judge's perspective

1:15-1:30 pm

Questions and Answers

1:30 pm

Evaluation and Adjournment

SECTION 1983 SUBSCRIPTION SERIES

\$249 for a year of quarterly updates of Professor Karen Blum's outlines.

You can now subscribe to receive, on a quarterly basis, Professor Blum's complete outlines on Government Liability Under Section 1983 and Qualified Immunity. Each outline is approximately 500 pages long and will be e-mailed to you quarterly as PDF files, which will replace the previous one. No inserts, no pocket parts, no space needed other than on your hard drive. While Professor Blum does not intend for her outlines to replace traditional treatises in the area of Section 1983 Litigation, they will keep you apprised of the latest case law developments in some of the most litigated issues under Section 1983.

Because this area of the law is so rapidly changing, with many complex questions creating Circuit splits and variations, it is crucial for both plaintiffs' and defendants' attorneys to be as current as possible on the law in their own Circuits. Her daily research of Section 1983 case law in both federal district courts and courts of appeals will assist you in making sure you have the latest cases at your fingertips.

Professor Blum's Local Government Liability Outline covers many basic and preliminary concepts that govern in any Section 1983 litigation (e.g., the difference between individual capacity and

official capacity suits and the difference between supervisory and municipal liability). She organizes the cases on municipal liability according to the theory relied on in litigating and deciding the cases (e.g., official policy, custom, failure to train or supervise, attribution of policymaker's decision, etc.). Special sections are devoted to substantive due process claims after *County of Sacramento v. Lewis* and state-created danger claims after *DeShaney*. There is extensive treatment of procedural due process claims. Barriers to Section 1983 litigation created by *Heck v. Humphrey* and *Sandin v. Conner* are included.

The Qualified Immunity Outline addresses the most litigated topics and collects cases by Circuit under each topic. There is also a brief section on absolute immunity and immunity with respect to private actors. Familiarize yourself with the latest cases in your circuit dealing with how and when the law is clearly established, the availability of qualified immunity in Fourth Amendment cases and cases where state of mind is relevant. Does your circuit ever give the qualified immunity issue to the jury? What are the rules on interlocutory appeals of the denial of qualified immunity?

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CIVIL RIGHTS LITIGATION (continued)

■ Michael McGuinness will analyze public employee constitutional claims. He will review the most important investigation, discovery and trial issues in First Amendment retaliation litigation. You will obtain an understanding of the public concern, interest balancing and causation tests. What are the best ways to prove and defend against retaliation claims? Free association and privacy claims? And how should you analyze the new equal protection doctrine?

■ Thursday's program will conclude with an important "Reality Check" on policy and training issues in police misconduct cases by Jack Ryan. What are the secrets to effective police selection and hiring? How does the theory of conditioned responses impact police training? Why is it important for police trainers to "think outside the box?" What is the impact of training on police conduct.

■ Friday's session opens with Professor Blum's annual analysis of municipal liability under Section 1983. She will review and analyze recent cases dealing with official policy as well as custom and usage cases. What is the latest on liability for failure to screen, train, supervise and discipline? Can there be municipal liability absent individual employee liability? Are county sheriffs policymakers for the county or the state?

■ Experienced litigator and professor, Michael Avery will then analyze the panoply of potential causes of action against police officers. He will look back at cases during the past year and help you understand developments in unreasonable seizures of unreasonable people, use of deadly force and bystander shootings, police failures to disclose exculpatory evidence and coercive interrogation after *Chavez*.

■ Gerald Birnberg, a noted expert on attorneys' fees, will then review the status of this important subject in 2004. What does *Buckhannon Board & Care Homes v. W. Va.* mean for litigators? What is the definition of "a prevailing party" after *Buckhannon*? What are the most important practical tips you can take home and use for obtaining attorneys' fees, whether you represent the plaintiff or defendant?

PROGRAM CHAIR:

Professor Karen M. Blum



Suffolk University
Law School
Boston, MA

Howard Friedman

Law Offices of Howard Friedman
Boston, MA

Honorable Ellen Segal Huvelle

United States District Court
Washington, DC

J. Michael McGuinness

The McGuinness Law Firm
Elizabethtown, NC

Professor Ira P. Robbins

American University
Washington College of Law
Washington, DC

David Rudovsky

Kairys, Rudovsky, Epstein & Messing
Philadelphia, PA

Honorable Robert C. Rufo

Associate Justice
West Roxbury Division
Boston Municipal Court Department
Jamaica Plain, MA

Jack Ryan

Law Enforcement Training and
Policy Consultant
Greenville, RI

SPEAKERS:

Michael A. Avery

Associate Professor of Law
Suffolk University Law School
Boston, MA

Gerald M. Birnberg

Williams, Birnberg & Andersen, L.L.P.
Houston, TX

Tamara Serwer Caldas

Robert F. Bensing Fellow
Southern Center for Human Rights
Atlanta, GA

Professor

Erwin Chemerinsky

University of Southern California
Law Center
Sydney M. Irmas Professor of Law
and Political Science
Los Angeles, CA

■ The program will conclude with pragmatic tips from the bench, provided by Judge Ellen Segal Huvelle of the U.S. District Court for the District of Columbia. Judge Huvelle has presided over many Section 1983 cases during her tenure on the bench. She will offer her opinion on when qualified immunity should be raised, give a judicial analysis of interlocutory appeals and review her judicial role in analyzing qualified immunity in excessive force cases after *Saucier v. Katz*.

Judge Huvelle will answer the common question: "When should parties use experts in Section 1983 cases?" and will offer pertinent "do's" and "don'ts" from her experienced judicial perspective.

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SECTION 1983: CIVIL RIGHTS LITIGATION

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PRISON LITIGATION

Wednesday, April 21, 2004

Washington, DC

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