

Civil Rights Section

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Mark your calendars...

Letter from the Chair New Section Goals

By Adele P. Kimmel, Washington, DC

I am thrilled and honored to serve as Chair of the Civil Rights Section this year. I have been a part of this Section's Executive Board for many years and plan to build on the great foundation established by my esteemed predecessors.

During my tenure as Chair, I would like to see our Section expand its role as a protector of civil rights by helping to create and train a larger community of trial lawyers who can understand and tackle the challenges of a civil rights practice. This not only entails increasing our membership base, but also involves increasing our access to substantive information, providing a forum for the exchange of ideas, and improving our practical litigation and trial skills. The



Adele P. Kimmel

will include our annual Supreme Court review, a traditional substantive topic that focuses on governmental accountability issues, a cutting-edge topic that will likely involve immigration detainee neglect cases, and a practical, practice-oriented topic. We welcome your suggestions for topics that would be both interesting and useful to you. And we fully expect to provide you with a great program next summer.

One of the highlights of the Philadelphia Convention was the presentation of our Section's annual Leonard Weinglass Award in Defense of Civil Liberties to Edward G. Kramer, a former Chair of this Section who has done incredible work protecting the right to fair housing. The award was presented to Ed

The Farm Bill Opens Doors for Disadvantaged Farmers

By Alyssa N. Daniels & B. Kristian W. Rasmussen III, Birmingham, AL

In May of this year, Congress approved new legislation which opens the door for socially disadvantaged farmers or ranchers, including African-American, Native American, Hispanic, and female farmers, across the country. The Food, Conservation and Energy Act of 2008,¹ appropriately labeled the Farm Bill,² provides certain farmers with an opportunity to seek legal compensation for illegal discrimination by the U.S. government.

Socially disadvantaged farmers are eligible to seek relief under the Farm Bill if they previously filed a claim under *Pigford v. Glickman*.³ In *Pigford*, class members asserted claims for discrimination by the United States Department of Agriculture

(USDA). The lawsuit was brought on behalf of African-American farmers across the country who were denied loans, disaster relief, and other aid frequently given to white farmers. The discriminatory practices of the USDA put many African-American farmers out of business. Due to inadequate notification provisions of the settlement, an estimated 73,000 farmers were denied relief despite filing suit because they missed the six month window to have their cases heard on the merits.

Adding insult to injury, claimants who would have been entitled to relief as part

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Back issues of Civil Rights Section Newsletters can be found on our Web site at www.justice.org/sections/civilrights.

This Section Newsletter is intended to be a forum of opinion and information pertaining to the interest of Section members. Unless specifically stated otherwise, its contents reflect the views of authors only, and should not be interpreted as a statement of the position or policies of AAJ or the Section itself.

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Immediate Past Chair

Ed Kramer: Fighting for Civil Rights for Minority and Low Income Communities

By Susan Ann Silverstein, Washington, DC

Edward G. Kramer was a student at Kent State in the tumultuous years following the assassination of Martin Luther King Jr. and the May 4, 1970, Ohio National Guard shootings that killed four students and wounded nine others. It was during this influential period in our nation's history that Ed's lifelong devotion to the cause of civil rights was born. As we mark the passing of four decades since that era and, as lawyers, we note the 40th anniversary of the Fair Housing Act, it is fitting that the Civil Rights Section awarded its 2008 Leonard Weinglass in Defense of Civil Liberties Award to Ed Kramer during the AAJ Annual Convention in Philadelphia.

The Weinglass award is given to the individual who made the greatest contribution to the defense of civil liberties by bringing, trying, or resolving a suit, or by otherwise protecting or advancing civil liberties in a way that has had an impact within the past year. For his work in the defense of civil liberties, the Civil Rights Section awarded the first ever Weinglass award to Leonard Weinglass during the AAJ 2004 Annual Convention. In subsequent years, the Section presented the award to two other worthy attorneys: Arthur Bryant and Alan Graf. As the 2008



Mary Dryovage, Ed Kramer, and Matthew A. Cartwright

devote himself to AAJ and other organizations. Among other leadership roles within AAJ, he has chaired the Employment Rights Section and the Civil Rights Section. Under his editorship, the Civil Rights Newsletter became a beneficial tool for attorneys practicing in our

specific area of law. He has written countless articles both establishing the baseline and pushing the boundaries of civil rights law for *TRIAL* magazine, as well as authoritative convention reference

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of the *Pigford* settlement were denied recovery because they were never notified of their option to participate in the settlement and submit their claim.

The Environmental Working Group, a Washington, DC, research group, identified gaps in the USDA's payments to these farmers. In 1995 the USDA reportedly paid \$1,841 in federal farm aid to African-American farmers and \$4,066 to other farmers. In 2005, African-American farmers received \$4,291 while other farmers received \$13,846.⁴

The Farm Bill does not open the door for new claims, but allows "late-filers" a chance to have their claims heard. The original deadline to file a claim was September 15, 2000. *Pigford* claimants, who originally filed suit but missed the settlement and never had their claims reviewed, will now have that opportunity. Each claim will be resolved based on the merits and payment will be determined on an individual basis by an approved adjuster.

According to the Farm Bill and the National Black Farmers Association, a nonprofit community organization, three eligible groups of farmers who previously submitted claims can seek relief under the bill's provisions. Eligible claimants include farmers who:

- Farmed or attempted to farm between January 1, 1981, and December 31, 1996;
- Applied to the USDA during that time for participating in a federal farm credit or benefit program and believed that

they were discriminated against on the basis of race in the USDA's response to that application; or

- Filed a discrimination complaint on or before July 1, 1997, regarding the USDA's treatment of such farm credit or benefit application.

Once eligibility has been decided, the farmer's claim can be filed under Track A or Track B relief. Claimants filing for Track A relief must prove they were racially discriminated against by the USDA by substantial evidence. Relief provided under Track A includes:

- \$50,000 cash payment;
- Forgiveness of all debt owed to the USDA incurred under the program;
- Tax to IRS 25 percent debt forgiveness of cash payment;
- Immediate termination of foreclosure; or
- Time priority loan consideration.

Claimants filing for Track B relief must prove racial discrimination by a higher standard—preponderance of the evidence



Alyssa N. Daniels



B. Kristian W. Rasmussen III

This track provides uncapped damages.

Congress has budgeted \$100 million, but estimated that damages will be greater than that amount. If the suits are successful, the Environmental Working Group believes the cases could cost several billion dollars along with the \$980 million previously paid to claimants in the original settlement. Already taking advantage of the Farm Bill's provisions, more than 900 African-American Alabama farmers filed new lawsuits against the USDA and more filings are expected. ■

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Notes

1. H.R. 2419, § 14012(b), 110th Cong. (2008) (Food, Conservation, and Energy Act of 2008).

2. *Id.*

3. 185 F.R.D. 82 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000).

4. Ben Evans, *800 Black Farmers File New Lawsuit*, JACKSON CLARION LEDGER, June 5, 2008.

Do you know your Section benefits?

Being a member of an AAJ Section is like having your own virtual office with partners in every state, but are you taking advantage of all the practice enhancing benefits your Section has to offer?

Newsletter Archives

Besides staying informed by receiving regular Newsletters, you have full access to your Section's Newsletter Archives on justice.org. Visit your Section's home page and catch up on any issues you may have missed.

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Section Document Library

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Your Section Membership Directory expands your referral network through your own personal listing.

Ed Kramer cont. from page 3

materials, such as the annual Supreme Court update.

In 1975, Ed founded Housing Advocates, Inc. (HAI), whose mission is to promote equal housing opportunities, tenant rights, and affordable housing using education, outreach, research, collaboration, and the power of litigation. Some of the country's most exceptional fair housing practitioners have passed through or continue to work for HAI, and countless individuals and families have obtained housing and compensatory relief through the work of Ed and his staff.

Over the years, Ed has fought diligently for civil rights on behalf of victims of discrimination by providing safe and decent housing for all tenants. Ed has not only represented individuals, but he has also used litigation as a means of obtain-

ing systemic relief from discrimination. For example, after fighting on behalf of African-American tenants who had been denied basic amenities such as potable water, light, and ventilation—all of which were provided to white tenants in the same residence—Ed obtained sufficient monetary relief to improve their conditions and desegregate their housing.

When Ed filed a class action complaint against investment banks rather than just going after mortgage brokers, the *Cleveland Free Times* called his strategy “a tectonic shift in how predatory lending cases are handled.” In pushing the limits of the law on behalf of his clients and the cause of civil rights, Ed has never lacked guts or grit. After a nonprofit organization was prevented from developing affordable housing by a local referendum process, Ed and his team exposed the process as a screen for intentional discrimination. Ed

took it in stride when he was forced to litigate the case to the Supreme Court, which he knew would be unsympathetic to his arguments—arguments that one day may be acknowledged to be ahead of their time and supported by the latest quantitative research.

Most importantly, Ed is also an incomparable friend. He is steadfast, brilliant, and unstinting in his generosity, love, and humanity. We look forward to many more years of his leadership within the Civil Rights Section and AAJ, and to his continuing efforts to build legal edifices to maintain and secure the civil rights of those who most desperately need his assistance. ■

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AAJ 2009 Winter Convention February 7–11, 2009 Sheraton New Orleans New Orleans, Louisiana

Join us in “The Big Easy” for the premier educational and networking opportunity for plaintiff lawyers. Strengthen and build on your legal skills while earning approximately 19* MCLE and AAJ Education credits, including

The Civil Rights Section Document Library Information at Your Fingertips

Did you know that the Civil Rights Section has an online repository of free documents? This incredible benefit is administered by the AAJ Exchange (www.justice.org/exchange).

The Document Library is an online resource of case-related documents and depositions for all Civil Rights Section members that is housed in a secure online environment where group members can share and download documents at no charge. Only AAJ Regular, Life, President's Club, and Sustaining members may access resources in the Exchange; only members of the Civil Rights Section may access the secure materials in their group's Document Library.

Additionally, the Document Library alleviates the need for the document's "owner" sending multiple copies, therefore avoiding the "me too" effect on the list server and saving the member time in distributing a document.

If documents are designated as available to AAJ members outside the group, and thus available on the Exchange, generally, the Section receives a royalty that can be used at the group's discretion. The group member who submits a document receives a five dollar credit for each document that is added to the database.

- To access the Civil Rights Section Document Library, follow these steps:

electronic format. Documents are screened by AAJ staff lawyers and then added to the Document Library.

There are two easy ways to submit documents to the Library. If the documents are in electronic format, you may upload them to the Library by following these steps:

- Go to www.justice.org/exchange.
- Click on "Section and Litigation Group Document Libraries."
- Click on "Upload Your Documents to Your Library."
- After logging in, select "Civil Rights Section" from the drop-down menu.
- Enter the name of the document.
- Select document type, e.g., Deposition or Court Document.
- Select "Restricted"—for your group's members only; or, "Non-Restricted"—

for all Exchange users (plaintiffs' lawyers only).

- Select the "Upload" button.

If documents are in paper format, you may send them directly to the AAJ Exchange at 777 6th Street, NW, Suite 200, Washington, DC 20001.

Should you need more information regarding uploading documents, please contact the Exchange at 800-344-3023 or 202-965-3500, ext. 615, by e-mail at exchange@justice.org, or visit www.justice.org/exchange.

We encourage members of the Civil Rights Section to use and contribute documents to their library. The Document Libraries are a valuable member resource and an effective way to network with your AAJ colleagues while strengthening your practice. ■

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Weekend with the Stars:
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**December 13-14, 2008
Sheraton New York Hotel & Towers
New York City**



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..... in the truest spirit of collaboration

AAJ Litigation Groups are a critical tool for our members to level the playing field when forced to battle the overwhelming resources of corporate counsel. Litigation Groups are voluntary networks of AAJ members who share an interest in a particular type of case. These groups cover a wide and diverse array of cases including Vioxx/Bextra, Nursing Homes, Inadequate Security, Heart Devices, and Gastric Bypass, to name a few.

By capitalizing on the experience of your colleagues who have prepared similar cases you can...

- Save time and money by gaining access to knowledge and documents from cases similar to yours.
- Avoid pitfalls by uncovering specific strategies from your colleagues.
- Reduce the time it takes to prepare a case for trial.
- Structure your discover strategies and arguments toward a favorable verdict or settlement.

AAJ currently supports more than 85 Litigation Groups and new ones are constantly being added.

Examples of AAJ Litigation Groups:

- Fair Housing
- Schools: Violence, Misconduct, and Safety
- Electronic Discovery
- Expert Witness (*Daubert*)



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