



**Welcome to the 2019 APTA Legal Affairs Seminar!** Topics for this conference will highlight evolving legislative and regulatory initiatives that will impact transit lawyers. Other session topics include Labor Panel – Collective Bargaining, 13(c), and the Janus Case, Clean Transportation: Electric Buses, TOD Joint Development Projects and P3s, and NEW this year is Legal 101/The Basics: Procurement, Grants, Buy America, and Rail.

***As always, continuing legal education credits will be available.***

*As part of APTA's sustainability commitment, conference materials are posted and available to registered attendees approximately one week prior to the seminar and continuously available for reference or downloading thereafter at <http://www.apta.com/mc/legal/synopsis/Pages/default.aspx>. To view the conference materials during the conference, please be sure to download the 2019 Synopsis of the Law and either bring a laptop with the files to the conference or print the portions you wish to use in hard copy and bring those copies to the conference. The 2019 Synopsis of the Law will be made available upon request in CD or printed form at additional cost. Additionally, the conference materials will be available for downloading on-site throughout the conference.*

**APTA's Vision Statement**

Be the leading force in advancing public transportation.

**APTA's Mission Statement**

To strengthen and improve public transportation, APTA serves and leads its diverse membership through advocacy, innovation, and information sharing.

**APTA's Diversity and Inclusion Policy**

APTA promotes an inclusive culture that supports and celebrates the unique attributes and perspectives of its individual members, allowing each and every person to make their fullest contribution to the industry.



# 2019 LEGAL AFFAIRS SEMINAR

## PROGRAM-AT-A-GLANCE

	Sunday, February 24	Monday, February 25	Tuesday, February 26
	<b>LEGAL AFFAIRS SEMINAR</b>	<b>LEGAL AFFAIRS SEMINAR</b>	<b>JOINT SESSIONS: LEGAL AFFAIRS and RISK MANAGEMENT</b>
7:30 a.m.	<b>Continental Breakfast</b> (7:30 – 8:30 a.m.)	<b>Continental Breakfast</b>	<b>Continental Breakfast</b>
7:45 a.m.			
8:00 a.m.	<b>Registration (8 a.m. – 3 p.m.)</b> <b>Welcome and Overview</b>		
8:15 a.m.	<b>Conversation with FTA Chief Counsel/Deputy Chief Counsel</b>	<b>Legal 101/The Basics Continued: Rail</b>	<b>Legal Affairs and Risk Management: Why are we here together?</b>
8:30 a.m.			
8:45 a.m.		<b>Rail Session: Modernizing the Passenger Rail System Requires Playing the Long Game</b>	<b>Sexual Harassment: Leadership in the #MeToo Era</b>
9:00 a.m.			
9:15 a.m.			
9:30 a.m.	<b>Track 1 – Legal 101/ The Basics</b> <i>Grants</i> <i>Procurement</i> <i>Buy America</i>	<b>Track 2 – Legislative Update</b>	
9:45 a.m.			
10:00 a.m.	<b>Track 2 – To Lead or Not to Lead (but “Just Manage”): That Is the Question.</b>	<b>Navigating the Buy America Landscape – New Technologies, Vehicles, and Tariffs</b>	
10:15 a.m.			
10:30 a.m.		<b>Break</b>	<b>Insurance &amp; Risk Management: Litigation, Investigation, &amp; Public Disclosures</b>
10:45 a.m.			
11:00 a.m.		<b>General Manager from New Orleans RTA Address</b>	<b>Break</b>
11:15 a.m.			
11:30 a.m.		<b>Lunch</b> <i>Sponsored by:</i> <i>Hanson Bridgett, LLP</i>	<b>Luncheon Keynote - Cyber Security Risk, Mitigation and Insurance</b>
11:45 a.m.			
12:00 p.m.	<b>Working Lunch: Roundtable Discussion</b> <i>(Transit agency attorneys and outside counsel or consultants for transit agencies only)</i>	<b>Break</b>	
12:15 p.m.			
12:30 p.m.		<b>TOD Joint Development Projects and P3s</b>	
12:45 p.m.			
1:00 p.m.			
1:15 p.m.	<b>Labor Panel – Collective Bargaining; 13(c); and the Janus Case</b>		<b>Closing Remarks from Legal Affairs Committee Chair</b>
1:30 p.m.			
1:45 p.m.	<b>Ethics: General Counsel Ethical Dilemmas and Best Practices</b>		
2:00			
2:15			
2:30	<b>Break</b>		
2:45	<b>Alternate Modes of Transportation: Update from the World of Ferries and Autonomous Vehicles</b>		
3:00		<b>Guns on Transit</b>	
3:15			
3:30	<b>Clean Transportation: Electric Buses</b>		
3:45			
4:00			
4:15			
4:30	<b>Break</b>		
4:45			
4:45	<b>Legal Affairs Committee Business Meeting</b>		
5:00	<b>Break</b>		
6:00	<b>Opening Reception (6 p.m. – 8 p.m.)</b> <i>Sponsored by:</i> <i>Kaplan Kirsch Rockwell</i>	<b>Special Event Reception (5 p.m. – 7 p.m.)</b> <i>Kushner Restoration Pavilion</i> <i>National WW II Museum</i> <i>Sponsored by:</i> <i>Thompson Coburn, LLP</i>	

# 2019 LEGAL AFFAIRS SEMINAR

**Sunday, February 24**

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## **Continental Breakfast**

7:30 - 8:15 a.m.

## **Welcome and Overview**

8 - 8:15 a.m.

### **Welcome**

- **Anthony A. Anderson**, Member, APTA Board of Directors; Chair, Legal Affairs Committee; Partner, Thompson Coburn LLP, Washington, DC

## **Conversation with FTA's Acting Chief Counsel**

8:15 - 9:30 a.m.

FTA's Acting Chief Counsel will provide a retrospective summary of significant FTA actions in 2018 and a preview of what's on the horizon in 2019.

### **Presenters**

- **Dana Nifosi**, Acting Chief Counsel, Federal Transit Administration, Washington, DC (invited)

**[\\*NEW this year – DUAL TRACK Programing\\*](#)**

## **Track 1 – Legal 101/The Basics: Procurement, Grants, Buy America**

9:30 - 11:30 a.m.

**PROCUREMENT:** Procurement Basics for new Counsel: What is Counsel's role in transit agency procurements and how can Counsel best assist a transit agency in carrying out this important function?

### **Moderator**

- **Steven D. Miller**, Partner, Hanson Bridgett LLP, San Francisco, CA

### **Panelists**

- **Samantha Leslie**, Staff Attorney-Regulatory Compliance, San Diego Metropolitan Transit System (MTS), San Diego, CA
- **Nicole Witt**, Associate, Hanson Bridgett LLP, San Francisco, CA

# Sunday, continued

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**GRANTS:** FTA Grants and What Attorneys Should Know About Them: What Grants are Available, What They're For, How to Get Them, and What Requirements Attach to Them.

## Moderator

- **Robin M. Reitzes**, Deputy City Attorney, City Attorney's Office, San Francisco, CA

## Panelists

- **Timothy Manglicmot**, Manager, Budget and Analysis, San Francisco Municipal Transportation Agency (Muni), San Francisco, CA
- **John Lynch**, Regional Counsel, Federal Transit Administration, Denver, CO

**BUY AMERICA:** Buy America ensures FTA grantees' federally-assisted contracts support U.S. manufacturing jobs. But that is easier said than done. What requirement applies? 100%, 70%, 60%? And, how does 100% equal less than everything? Buy America 101 will demonstrate the framework for applying the many Buy America standards to your client's procurements, ensuring compliance, and finding the answers to the inevitable grey area issues that land on your desk.

## Presenter

- **James P. LaRusch**, Secretary, Standards Development Oversight Council; Vice Chair, Business Member Programs Committee; Corporate Counsel, Raul V. Bravo + Associates, Inc., Reston, VA

## Track 2 – Legislative Update

9:30 - 10 a.m.

A review of current and potential legislative activity affecting the public transportation industry. The midterm elections brought many new faces to Congress and further emphasized the necessity of bipartisan solutions to get things done. Infrastructure funding and authorization legislation will be major topics in the 116th Congress, and APTA will continue to advocate for policies that advance public transportation and benefit the country.

## Presenter

- **Markus Hybner**, Sr. Legislative Representative, American Public Transportation Association, Washington, DC

## Track 2 – To Lead or Not to Lead (but “Just Manage”): That is the Question

10:15 - 11:30 a.m.

The ability to inspire, motivate, and retain engaged, productive colleagues is not magic, but it does take understanding yourself, others, and certain basic principles of successful leadership. Hear from the “Best of the Best” lawyer leaders on tips and strategies for leading your legal office from “ho-hum” to “AWESome!”

## Moderator

- **Shelley Devine**, General Counsel, Tri-County Metropolitan Transportation District of Oregon (TriMet), Portland, OR

# Sunday, continued

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## Panelists

- **Jayne Blakesley**, Partner, Hayes, Godfrey, Bell, Salt Lake City, UT
- **Eva Kripalani**, Co-Founder, Office of General Counsel Network LLC, Portland, OR
- **Mary VanderWeele**, Vice President of Strategic Initiatives, Chief Administrative Office, NIKE, Inc., Beaverton, OR

## Working Lunch: Roundtable Discussion

11:30 a.m. - 1 p.m.

The roundtable discussion is a forum for transit agency attorneys and outside counsel or consultants for transit agencies to exchange information in a non-attribution, confidential setting.

## Facilitator

- **Anthony A. Anderson**, Member, APTA Board of Directors; Chair, Legal Affairs Committee; Partner, Thompson Coburn LLP, Washington, DC

## Break

1 - 1:15 p.m.

## Labor Panel – Collective Bargaining, 13(c), and the Janus Case

1:15 - 2:30 p.m.

The labor panel will feature speakers on a variety of issues including the Supreme Court's Janus decision on public employees' union dues, perspectives of a transit services contractor on bargaining, and a primer and updates on section 13(c) labor protection.

## Panelists

- **Jane Sutter-Starke**, Partner, Thompson Coburn LLP, Washington, DC
- **Patricia A. Day**, Senior Director for Labor Relations, Transdev North America, Boston, MA
- **Cliff Godiner**, Partner, Thompson Coburn LLP, St. Louis, MO

## Alternate Modes of Transportation

2:30 - 3:30 p.m.

This session will feature two presentations on growing developments in the world of public transit. The first presentation will focus on the growing provision of public commuter ferry transportation and some of the issues with such specialized service that are of interest to all public transit attorneys. The second presentation, titled "Smart cities and smart transit agencies," will focus on autonomous vehicles and issues regarding who should collect and control data, whether government agencies are best-positioned to gather and disseminate user data, or whether independent bodies are best positioned to serve as a clearinghouse for shared data. Legal issues such as privacy, liability, and control of intellectual property rights will be discussed.

# Sunday, continued

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## Presenters

- **Steven D. Miller**, Partner, Hanson Bridgett LLP, San Francisco, CA
- **Michael N. Conneran**, Partner, Hanson Bridgett LLP, San Francisco, CA

## Clean Transportation: Electric Buses

3:30 - 4:30 p.m.

This session will discuss zero emission bus projects, including regulatory, contract, and performance issues that should be taken into consideration. Panelists will describe best practices for evaluating how zero emission buses can fit into your agency's operations, and identify performance issues that legal counsel may need to consider when drafting various contracts and advising their clients about the full cost and impact of a zero emission bus project. An update on California's new Innovative Clean Transit Regulation will also be provided.

### Moderator

- **Karen Landers**, Vice Chair, Legal Affairs Committee; General Counsel, San Diego Metropolitan Transit System (MTS), San Diego, CA

### Panelists

- **Dan Raudebaugh**, Executive Director, Center for Transportation and the Environment, Atlanta, GA
- **Bill Spraul**, Chief Operating Officer, Bus, San Diego Metropolitan Transit System (MTS), San Diego, CA

## Legal Affairs Committee Meeting

4:45 - 5 p.m.

Chair, Anthony A. Anderson

## Break

5 - 6 p.m.

## Opening Reception

6 - 8 p.m.

Sponsored by:

**Kaplan Kirsch and Rockwell, LLP**



KAPLAN KIRSCH ROCKWELL

# Monday, February 25

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## Continental Breakfast

7:30 - 8:30 a.m.

## Legal 101/The Basics Continued: Rail

8:15 - 8:45 a.m.

In this continuation of the primer on “the basics” of the legal structures that affect the transit industry, the panelists will walk through the key issues that inform the regulatory structure and the agencies affecting railroads – the ICC Termination Act of 1995 and the Surface Transportation Board that it created to replace the ICC, the federal rail safety acts and the Federal Railroad Administration, the Railway Labor Act and the Railroad Retirement system, and some key issues that arise under that regulatory and statutory regime, with emphasis on preemption and quiet zones. All of this in ½ hour! Come one, come all!

### Moderator

- **Charles A. Spitulnik**, Partner, Kaplan Kirsch & Rockwell LLP, Washington, DC

### Panelist

- **Michael N. Conneran**, Partner, Hanson Bridgett LLP, San Francisco, CA
- **Eric M. Hocky**, Partner, Clark Hill PLC, Philadelphia, PA

## Rail Session: Modernizing the Passenger Rail System Requires Playing the Long Game

8:45 - 10 a.m.

Over ten years have passed since Congress endorsed legislation to improve Amtrak on-time performance and mandated passenger and freight railroads to implement Positive Train Control safety technology, but neither measure has been fully implemented. The Class I Railroads’ attempt to strike down the Amtrak on-time performance law has resulted in a circuitous journey through the DC Circuit, but that journey may be nearing an end. Meanwhile, many railroads have implemented Positive Train Control, but most will have availed themselves to one last extension. Although these efforts to improve Amtrak on-time performance and railroad safety are getting closer to full implementation, additional delays may yet occur.

In Texas, private developers of a high-speed rail line between Houston and Dallas certainly understand how to play the long game as they attempt to introduce Japanese high-speed rail technology into the United States.

### Moderator

- **Charles A. Spitulnik**, Partner, Kaplan Kirsch & Rockwell LLP, Washington, DC

### Panelists

- **Stephanie Anderson**, Attorney-Advisor, Federal Railroad Administration, Washington, DC (Invited)
- **Allison I. Fultz**, Partner, Kaplan Kirsch & Rockwell LLP, Washington, DC
- **Kevin M. Sheys**, Partner, Nossaman LLP, Washington, DC
- **Jennifer Hu**, Director-Railroad Legal & Regulatory Affairs, Texas Central High-Speed Railway, LLC, Washington, DC

# Monday, continued

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## Navigating the Buy America Landscape – New Technologies, Vehicles, and Tariffs

10 - 11 a.m.

Just when you thought you knew your way around Buy America, the map has changed. Accounting for new, expensive, and usually foreign technology has brought renewed emphasis into the always elusive definition of component and subcomponent 'manufacturing.' Evolving systems such as vehicle components, tariffs, and trade protection legislation have further changed the landscape. You'll need a map just to find your next bus!

### Moderator

- **James P. LaRusch**, Secretary, Standards Development Oversight Council; Vice Chair, Business Member Programs Committee; Corporate Counsel, Raul V. Bravo + Associates, Inc., Reston, VA

### Panelists

- **Steven S. Policar**, Superintendent, Transit Fleet Contract Management Group, King County Metro Transit Division/Department of Transportation, Seattle, WA
- **Emmanuelle Toussaint**, Vice Chair, Business Member Business Development Committee; Vice President Legal, Regulatory and Public Affairs, Nova Bus, Plattsburgh, NY

## Break

11 - 11:15 a.m.

## Greetings from New Orleans RTA's Chief Executive Officer

11:15 - 11:45 a.m.

### Guest Speaker

- **Justin T. Augustine, III**, Chief Executive Officer, Regional Transit Authority, New Orleans, LA (invited)

## Lunch

11:45 a.m. - 12:45 p.m.

Sponsored by:  
Hanson Bridgett, LLP



# Monday, continued

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## TOD Joint Development Projects and P3s

12:45 - 1:45 p.m.

P3s as Instruments of Public Policy: Opportunities for Joint Development, TOD, Intermodal Connectors and Innovation Alternative structures for involving the private-sector in major transit project delivery, often broadly referred to as public-private partnerships (P3s), promise the opportunity for improvements relative to the status quo – improved risk allocation, improved quality, improved outcomes. Any offered improvements should however be measured against public policy objectives to ensure project delivery methods and public goals align. This panel will discuss current legal and commercial issues in using P3s to deliver projects that align with prominent transit public policy goals, such as the encouragement of TOD and joint development, the establishment of intermodal connectors, and the delivery of innovation in all its forms.

### Moderator

- **Suzanne Silverman**, Partner, Kaplan Kirsch Rockwell, New York, NY

### Panelists

- **Dana Nifosi**, Acting Chief Counsel, Federal Transit Administration, Washington, DC (invited)
- **Adam Giuliano**, Partner, Kaplan Kirsch Rockwell, New York, NY
- **T. Byron Smith**, Assistant Attorney General and Principal Counsel, Maryland Transit Administration, Baltimore, MD

## Ethics – 2 Hot Topics for the Price of 1

1:45 - 3:15 p.m.

### The Role of General Counsel and Staff Attorneys with the Executive Director:

General Counsel and Staff Attorneys have regular and ongoing contacts with the Executive Director on a wide range of legal matters. However, frequently the client is not the Executive Director— but rather is a governing board, municipality, county or regional authority. The Executive Director may ask counsel for advice on policy matters; request or “order” counsel to keep certain communications confidential; ask counsel for advice on matters outside the scope of counsel’s engagement or authority; or direct counsel to develop a legal basis or justification as to a matter which is the prerogative or right of the client (not the Executive Director). We’ll examine real world problems and discuss solutions.

### Crisis Management 101 For the Transit Lawyer:

Maintaining Your Professional Ethics in the Midst of a Crisis: Your client finds itself in the midst of a media and political firestorm. Reporters are seeking comment; politicians are calling for resignations; and scandal could lead to potential liabilities and even criminal consequences. While everyone in and around the Agency seems to be losing their cool, you as their legal counsel must bring order to the situation— and under tight time constraints with ever evolving factual circumstances. As events unfold by the hour, you need to provide sound advice under pressure, but you also must never forget your ethical responsibilities. Important issues to be covered include managing client confidences, the possible need to disclose illegal activity, remembering who you represent (and don’t represent), and the obligation to provide zealous representation. The presenters will examine and give examples of what the Rules of Professional Conduct permit a lawyer to say to the ever present and demanding media. The Rules of Professional Conduct may not get your client out of hot water, but they will keep you out of it.

### Presenters

- **Bruce M. Smith**, Member, Apperson Crump PLC, Memphis, TN
- **Fred Wagner**, Partner, Venable, LLP, Washington, DC

# Monday, continued

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## Break

3:15 - 3:30 p.m.

## Guns on Transit

3:30 - 4:30 p.m.

What happens when a passenger shows up with a firearm on your bus, train, or ferry? We will analyze the implications of the Second Amendment and federal/state laws on transit passenger safety policies and procedures. Our distinguished panelists will share examples of real life situations in California and Texas, and the approaches used by their agencies.

### Moderator

- **Madeline Chun, Esq.**, Partner, Hanson Bridgett LLP, San Francisco, CA

### Panelists

- **Matthew Burrows**, General Counsel, San Francisco Bay Area Rapid Transit District (BART), Oakland, CA
- **Kerri Butcher**, Chief Counsel, Capital Metropolitan Transportation Authority, Austin, TX
- **Bonnie Prosser Elder**, General Counsel / Senior Vice President Legal, VIA Metropolitan Transit, San Antonio, TX
- **Nicole Witt**, Associate, Hanson Bridgett LLP, San Francisco, CA

## Special Event Reception

5 - 7 p.m.

**Kushner Restoration Pavilion  
National WW II Museum**  
940 Magazine Street  
New Orleans, LA

**Sponsored by:**  
**Thompson Coburn, LLP**



# Tuesday, February 26

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## Continental Breakfast

7:30 - 8:30 a.m.

## Legal Affairs and Risk Management: Why Are We Here Together?

8:30 - 9 a.m.

### *Legal Affairs and Risk Management Joint Session*

#### Remarks

- **Paul P. Skoutelas**, President and CEO, American Public Transportation Association, Washington, DC
- **David J. Carol**, Chief Operating Officer, American Public Transportation Association, Washington, DC
- **Anthony A. Anderson**, Member, APTA Board of Directors; Chair, Legal Affairs Committee; Partner, Thompson Coburn LLP, Washington, DC
- **Jim Keane**, Vice-Chair, Risk Management Committee; General Manager, Operations Safety, Port Authority of New York and New Jersey

## Sexual Harassment: Leadership in the #MeToo Era

9 - 10:30 a.m.

### *Legal Affairs and Risk Management Joint Session*

This interactive session will ignite an engaging conversation on the opportunities for legal and risk management professionals in the #MeToo era. Panelists will discuss how you can ensure your organization knows the risks of a harassment complaint, as well as how to effectively identify, investigate, and respond; also, how the resurgence of this sleeping giant affects leaders and how we can build trust to lead productive conversations where everybody wins.

#### Moderator

- **Jenifer M. Ross-Amato**, Deputy General Counsel, Regional Transportation District, Denver, CO

#### Panelists

- **Diana Wagner-Hilliard, JD**, Director EEO & Workforce Diversity, Bi-State Development Agency, St. Louis, MO
- **Teri R. Fisher**, CEO & Managing Partner, Insight Strategies, Inc., Torrance, CA
- **James N. Foster, Jr.**, Partner, McMahon Berger, St. Louis, MO

## Tuesday, continued

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### Insurance and Risk Management: Litigation, Investigation & Public Disclosures

10:30 - 11:30 a.m.

#### *Legal Affairs and Risk Management Joint Session*

"If you can predict it, you can prevent it". This session will highlight recent court decisions in the area of enterprise risk management and what lessons risk managers can learn from these cases. Best practices in investigating insurance or self-insured claims and public disclosures will also be discussed. Attendees will walk away with the top trends as to litigation involving transit agencies and in enterprise risk management

#### Presenter

- **Bruce M. Smith**, Member, Apperson Crump PLC, Memphis, TN

### Break

11:30 - 11:45 a.m.

### Luncheon Keynote - Cyber Security Risk, Mitigation and Insurance

11:45 a.m. - 1:15 p.m.

#### *Legal Affairs and Risk Management Joint Session*

#### Moderator

- **Kenneth Reed, ARM-P, AIC**, Secretary, Risk Management Committee; Director of Risk Management, Ohio Transit Risk Pool, Wadsworth, OH

#### Keynote Speaker

- **Marlene Brehm**, Senior Vice President, Sales & Marketing, @RISK (At Risk) Technologies, Dallas, TX

#### Panelists

- **Sean O'Brien**, President & CEO, @RISK (At Risk) Technologies, Dallas, TX
- **Chris Mee**, Assistant Vice President, AON Risk Services, Chicago, IL

### Closing Remarks from Legal Affairs Committee Chair

1:15 - 1:30 p.m.

#### Remarks

- **Anthony A. Anderson**, Member, APTA Board of Directors; Chair, Legal Affairs Committee; Partner, Thompson Coburn LLP, Washington, DC

## Tuesday, continued

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Attendees of the 2019 Legal Affairs Seminar are welcomed to attend the remainder of the Tuesday sessions for the Risk Management Seminar.

# 2019 RISK MANAGEMENT SEMINAR

## Welcome from Risk Management Committee Chair

1:45 - 2 p.m.

### Remarks

- **Mark A. Emmons**, Chair, Risk Management Committee; Director of Safety, Training & Security, Indianapolis Public Transportation Corporation (IndyGo), Indianapolis, IN

## ADA Update

2 - 3 p.m.

### Moderator

- **Mark A. Emmons**, Chair, Risk Management Committee; Director of Safety, Training & Security, Indianapolis Public Transportation Corporation (IndyGo), Indianapolis, IN

### Guest Speaker

- **David Knight**, Trial Attorney, Civil Rights Division, U.S. Department of Justice, Washington, DC

## Bus Operator Assaults

3 - 4:30 p.m.

### Moderator

- **Mark A. Emmons**, Chair, Risk Management Committee; Director of Safety, Training & Security, Indianapolis Public Transportation Corporation (IndyGo), Indianapolis, IN

### Panelists

- **Lisa Staes**, Chair, Bus Safety Committee; Director, Transit Safety and Workforce Development Programs, Center for Urban Transportation Research/College of Engineering, Tampa, FL
- **Kevin P. Gaddis**, Deputy Chief, Patrol Operations Bureau, Metro Transit Police, Washington Metropolitan Area Transit Authority, Washington, DC