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The Center for Labor and Employment Law

NYU LAW

New York University School of Law

NYU Labor & Employment Law NEWSLETTER

OF THE CENTER FOR LABOR AND EMPLOYMENT LAW

New York University School of Law

NYU 60th Annual Conference on Labor Examines Retaliation and Whistleblowers in the Workplace

Paul M. Secunda, University of Mississippi School of Law

ON MAY 31 AND JUNE 1, OVER 200 ATTORNEYS, government officials and academics participated in the NYU Center for Labor and Employment Law's 60th Annual Conference on Labor on NYU's campus in New York City. The labor conference is the premier event sponsored by the Center and typically involves a good cross section of the members of the Center's Advisory Board. The focus of this year's conference was retaliation and whistleblowing in the workplace. Welcomed by conference organizer and Center Director Professor Samuel Estreicher of the NYU School of Law, attendees were treated to six panels over two days on nearly every aspect of the law on retaliation and whistleblowing. • In addition, former NLRB Board Chairman Peter Hurtgen, senior vice president of labor relations of the Stop & Shop Supermarket Companies, and formerly of Morgan Lewis & Bockius, was honored for his

From left to right: Samuel Estreicher, Jonathan Ben-Asher, Willis Goldsmith, John Fullerton III, and Michael Delikat

contributions to labor and employment law, with Bruce Raynor, president of UNITE HERE, providing after-dinner remarks. Conference participants also heard from luncheon speakers Acting Solicitor for the Department of Labor Jonathan Snare and Member Wilma Liebman of the National Labor Relations Board, with introductory remarks from former Board Member Marshall Babson of Hughes Hubbard & Reed.

60th Annual CONFERENCE ON LABOR

1st Panel
Anti-Retaliation Under Federal and State Discrimination and Wage-Hour Laws; Implications of *Burlington Northern v. White*

2nd Panel
Developments in State and Federal Whistleblower Protection Laws

3rd Panel
Developments Under the Sarbanes-Oxley Act

4th Panel
Anti-Retaliation Protections Under the NLRA and Collective Bargaining Agreements

5th Panel
Government Whistleblowers; Implications of *Garcetti v. Ceballos*

6th Panel
Developments Under State Wrongful Discharge Laws

7th Panel
Ethical Issues for In-House Employment and Transactional Lawyers

The first panel discussed anti-retaliation law after the Supreme Court's decision in *Burlington Northern v. White*. Michael Bernstein of Bond, Schoeneck & King moderated a panel consisting of Zachary Fasman of Paul, Hastings, Janofsky & Walker and Wayne Outten of Outten & Golden. Their talks focused on what constitutes a judicially cognizable adverse employment action for purposes of retaliation law and the growing disagreement among various courts about the limits on employee protections under retaliation law in different contexts. Professor David Sherwyn of the Cornell University School of Hotel Administration, and a NYU Labor Center research scholar, provided commentary.

The first panel focused on statutory retaliation protections under Title VII and other laws. The second panel, which Frederick Braid of Holland & Knight moderated, concentrated on federal and state whistleblower protection statutes. The first panelist, Eric Taussig, former vice president and associate general counsel for Philip Morris (now Altria), who currently serves as an arbitrator, mediator and legal consultant, provided a comprehensive overview of the different types of federal whistleblowing claims available under federal statutory law. Michael Curley of Morgan Lewis then reviewed state whistleblower protection, noting the key distinctions in state laws and discussing specific state laws in depth. Next, Ethan Brecher of Liddle & Robinson addressed whistleblower claims before the NASD and NYSE and the relative success claimants have had obtaining redress for adverse actions sustained as a result of resisting or complaining about unlawful conduct by their employers. Charles Fournier, employment counsel for NBC Universal, and Eugene Friedman of Friedman & Wolf offered spirited commentary.

The conference's third panel turned to emerging developments in whistleblowing law under the Sarbanes-Oxley Act (SOX). Moderated by Michael Delikat of Orrick, Herrington & Sutcliffe, panelists Willis Goldsmith of Jones Day and John Fullerton of Sullivan & Cromwell, along with commentator Jonathan Ben-Asher of Beranbaum, Menken, Ben-Asher & Bierman, all considered whether the law was effectively protecting those who engaged in whistleblowing activity involving the reporting of fraud against shareholders. While Delikat focused on preliminary reinstatement orders under SOX and other emerging legal developments under the law, Goldsmith discussed investigating and defending against whistleblower claims and Fullerton analyzed the important principle of "protected activity" under the law. Finally, Ben-Asher identified the practical and difficult implications

for lawyer whistleblowers under the Sarbanes-Oxley Act.

The fourth panel, moderated by Daniel Clifton of Lewis, Clifton & Nikolaidis, focused on retaliation provision in the union environment under the National Labor Relations Act (NLRA). Daniel O'Gorman of Ford & Harrison discussed the right of non-unionized employees to be free from retaliation for work-related complaints under the NLRA. Peter Clark, an experienced regional NLRB attorney now with Kauff, McClain & McGuire, addressed non-suit and release provisions in collective bargaining and severance agreements. Former AFL-CIO General Counsel Laurence Gold of Bredhoff & Kaiser concluded with remarks on the current state of anti-retaliation protections in the traditional labor context.

Starting the second day of the conference, overall moderator Jeffrey Kohn of O'Melveny & Myers welcomed the conference participants back for another day of dialogue. Moderated by Lloyd Chinn of Proskauer Rose and with lively commentary provided by Robert Herbst of Beldock Levine & Hoffman, the fifth panel explored the implications of the Supreme Court's decision in *Garcetti v. Ceballos* for public employee whistleblowers and First Amendment retaliation claims. Professor Paul Secunda of the University of Mississippi School of Law discussed the diminishment of public employee speech rights in light of *Garcetti* and how the recognition of public employer expressive association rights in the Court's *Solomon Amendment* decision could further reduce employee protections. Barbara Spain, a member of the U.S. Merit Systems Protection Board, then offered insight into how whistleblower complaints by federal employees are handled by her agency and the federal courts.

The penultimate panel of the conference considered developments under state wrongful discharge law. Moderated by Pearl Zuchlewski of Kraus & Zuchlewski, she and Cornell Professor Sherwyn examined whistleblowing and retaliation issues under the common law of various state court jurisdictions.

The final session brought back Dennis Duffy, former employment counsel for Time Warner and now with Baker & Botts in Houston, who presented the ethical issues confronting the in-house labor and employment lawyer. Plaintiff counsel Darnley Stewart of Bernstein Litowitz Berger & Grossman provided commentary.

All of these panelist presentations will be memorialized in a volume, edited by Professor Secunda, to appear next year entitled: Retaliation and Whistleblowers: Proceedings of New York University 60th Annual Conference on Labor.

Left: Hon. Jonathan L. Snare, acting solicitor, U.S. Department of Labor

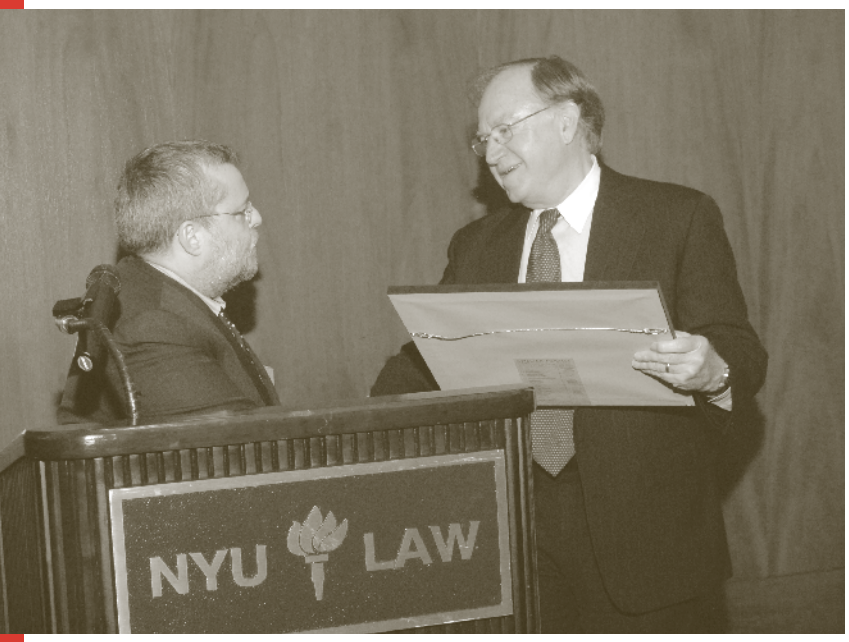
Right: Hon. Wilma Liebman, member of the NLRB

Nine other leading practitioners and academics will provide additional commentary on retaliation and whistleblowing law in this country and around the world. Contributors include Professors Eric Schnapper of the University of Washington School of Law, Deborah Brake of the University of Pittsburgh Law School, Richard Moberly of the University of Nebraska School of Law, Jonathan Macey of Yale Law School, Terry Dworkin of the University of Indiana Business School, Cynthia Estlund of NYU School of Law, Richard Carlson of South Texas College of Law, Orly Lobel of the University of San Diego Law School, and Erica Collins of Paul Hastings. ●

The Labor Center Celebrates Peter J. Hurtgen

HELD ON THE EVENING OF THE FIRST DAY of the 60th annual conference, the Labor Center's inaugural awards dinner celebrating distinguished contributions to the field of labor and employment law was a signal success. Accompanied by many notable guests and faculty, the Center celebrated the very special role played in our field by the Honorable Peter J. Hurtgen.

Peter Hurtgen, a former partner in the labor and employment law firm Morgan Lewis & Bockius, focused his practice on representing senior management in labor matters, particularly with respect to complex issues involving collective bargaining and the NLRA. From 2002 until December 31, 2004, Hurtgen served as the director of the Federal Mediation and Conciliation Service (FMCS), and from 1997 to 2002 as both a member and chair of the NLRB. He is also an emeritus member of the Labor Center's advisory board. As of July 1, 2007, Peter J. Hurtgen joined Stop & Shop Supermarket Companies, a subdivision of



Top: Samuel Estreicher and Peter J. Hurtgen

Above: Bruce Raynor, President of UNITE HERE

Royal Ahold N.V., an international supermarket operator, as senior vice president of labor relations.

Also gracing the event was our renowned guest speaker Bruce Raynor, president of UNITE HERE, the union representing nearly half a million workers in the hospitality, gaming, apparel, textile, retail, distribution, food service and laundry industries in North America. In his address, Raynor expressed his thoughts on whether organized labor might not be better off without the Labor Board, insisting that the "government labor relations environment" has become "dysfunctional." Raynor further stated that, after the next presidential election, American unions will need to decide if they want to continue the NLRB structure or if they would be better off without it.

After dinner, Professor Estreicher presented Mr. Hurtgen the Center for Labor and Employment Law's Award of Appreciation, saying, "People are always honored too late in life" and that the Center sought to deviate from that norm. Special thanks go to Mark Dichter from Morgan Lewis, the Honorable Wilma Liebman from the NLRB, Zachary Fasman from Paul, Hastings, Janofsky & Walker and Willis Goldsmith from Jones Day, who took the time to speak at the event and helped the Center for Labor and Employment Law make this evening a success. The generosity of the law firms just mentioned and Proskauer Rose merit special notice. ●

A Different Kind of Baseball Legend

Marvin Miller returns to his alma mater, NYU.

ON APRIL 4, 2007, NEW YORK UNIVERSITY and the Center for Labor and Employment Law hosted a roundtable discussion led by Marvin J. Miller. According to Hank Aaron, "[he] is as important to the history of baseball as Jackie Robinson." Miller is the former executive director of the Major League Baseball Players Association (MLBPA). Entering the field of contract negotiation at a time when ballplayers lived with a minimum salary of $6,000 and "an endless string of one-year renewals," he was among the first to end those dismal conditions. The Labor Center welcomed Marvin Miller in the Law School's Furman Hall, where he spoke to students studying law and the sports business. ESPN's *The Game 360*'s Fran Healy also took part in the roundtable discussion, drawing from his own experience and interviews with the people who had interacted with Miller. According to *The Game 360*, "[Miller] has influenced professional sports in America more than anyone else, yet he remains anonymous to sports fans everywhere."

The Game 360 and the Center's Ben Eisenman organized the opportunity for NYU students to meet this significant figure in professional sports. Jeffrey Klein, partner at Weil Gotshal & Manges, a Labor Center board member and a sports law expert, provided further insights during the roundtable. "Lots of people in the sports world often want to talk in terms of trivia. One of the most important trivia questions that everyone should know the answer to is the following: Name the person most eligible, who should be in the hall of fame but who is not there? I'll give you a hint: that person never hit a baseball, never threw a pitch, but unquestionably, in the

view of many of us who have been in the sports world for a while, is the most deserving person not currently in the Hall of Fame. The answer to that question is Marvin Miller. Marvin is simply one of the most influential people ever to be involved in the history of baseball."

Born on April 14, 1917, in the Bronx, Miller grew up in Brooklyn, not far from Ebbets Field, which naturally made him a devoted supporter of the Brooklyn Dodgers and a baseball fan for life. He received a B.S. in economics from New York University in 1938 and served as the MLBPA's executive director from 1966-82. He transformed the player's union into one of the strongest unions in the United States. His previous experience as chief economist and negotiator for the United Steelworkers proved a valuable training ground for the labor leader that would transform baseball's status quo.

In 1965, baseball pitching legend Robin Roberts approached Miller with the chance to actively work in the game he loved. The players then elected Miller to head their players' association, a position previously held by management-approved officials. His first task in office was "to organize the first legitimate trade union in professional sports."

At the time of his appointment, the average salary was $19,000 and no player was paid more than $100,000. "The owners had long since entered into an illegal agreement that no one could get more that $100,000 a year. It didn't matter who you were." Miller was outraged by their collusion to prevent a free market adjustment of salaries. Owners were used to the idea that a player had no power on his own, and that they, the owners, could decide everything. Miller led the union through three major strikes, the first one lasted 13 days in 1972, the second during spring training in 1980 and the third followed in 1981 and lasted for 50 days. In time, labor has come to be seen as a critical partner to the commercial success of professional baseball. ●

Two baseball legends in their own rights: ESPN's Fran Healy and Miller

NYU Labor Center–ABA Joint Programs

THE CENTER FOR LABOR AND EMPLOYMENT Law has a history of working with the American Bar Association in organizing training programs and ABA conferences to benefit both the whole field of labor and employment law and the ABA community. In 2007, the Center and the ABA jointly ran the Litigation Skills Workshop for the Employment Lawyer in tandem with the ABA's Technology in the Practice & Workplace Committee Midwinter Meeting.

On February 2, 2007, a diverse group of attorneys and law professionals gathered in the Lester Pollack Colloquium for the Litigations Skills Workshop. Starting with case assessment and pleading strategies and pitfalls, the first panels discussed investigation, witness preparation, effective depositions, electronic discovery issues, and summary judgment motions. After lunch, the second set of panels concluded the day with jury selection, effective direct, introducing documentary evidence, evidentiary objections, effective cross-examinations and opening and closing arguments. Professor Estreicher (NYU Law), Lloyd Chinn (Proskauer Rose), and Arnold H. Pedowitz (Pedowitz & Meister) co-chaired the program.

A number of advisory board members served on the workshop panels, among them Jeffrey Klein (Weil, Gotshal & Manges), Pearl Zuchlewski (Kraus & Zuchlewski), Mark Risk (Mark Risk, P.C.), Scott J. Wenner (Schnader Harrison Segal & Lewis), Willis Goldsmith (Jones Day), Robert Herbst (Beldock Levine & Hoffman) and Kenneth Thompson (Thompson Wigdor & Gilly). Lloyd Chinn both served as a program co-chair and spoke about effective depositions during one of the panels.

On April 25-27, 2007, the Center again teamed up with the ABA on the Annual Technology in the Practice & Workplace Committee Midwinter Meeting to discuss the impact of technology on both practices and the workplace. NLRB Regional Director Wayne Gold later stated that "the splendid accommodations of the Pollack Colloquium proved to be a most appropriate setting for two days of outstanding and well-received presentations from a host of leading national and international experts addressing a range of subjects."

Divided into five modules, the conference gave an overview of the new developments and the impact those developments have made on the practice of law and the workplace environment. The first module discussed the use of law-related blogs and the related legal issues. A subsequent module provided an overview of the new Federal Rules of Civil Procedure. The panel offered practical information

and advice from experienced employment law practitioners, focusing on client obligations, the best practices and solutions for management, as well as the retention and destruction of electronic data. A mock e-discovery hearing concluded the first day of panels. The Honorable Judge P. Kevin Castel from the U.S. District Court for the Southern District of New York served as the presiding judge, while Michael J. Gray from Jones Day and Adam T. Klein from Outten & Golden served as attorneys for the defense and the plaintiff, respectively.

Bernstein Litowitz Berger & Grossman generously sponsored a reception at the end of the first day. The second day of the conference began with module three, which dealt with the impact of technology in the workplace, discussing health and safety issues regarding the use of technology, particularly employees' stress caused by the usage of this technology. Furthermore, the panelists covered potential legal claims connected with permitted uses of new technologies. They then moved on to discuss employee privacy issues, concentrating on where the line should be drawn between privacy and the use of technology in the workplace, with particular emphasis on the use of GPS and RFIDs to monitor and track products and property and the use of biometric technology for security and timekeeping purposes.

The next to last panel offered a comprehensive analysis and discussion of the *Register Guard* debate, featuring Jones Day's Andrew Kramer and Bredhoff & Kaiser's Larry Gold. The NLRB is expected to deliver its decision in the *Guard Publishing Co., d/b/a The Register-Guard* case, in which the Board will determine the scope of the NLRA Section 7 rights to employer policies with respect to the use of emails. The decision is likely to have substantial implications regarding the NLRA in the technological workplace. The fifth and final module ended the conference with a discussion on the ethical issues involving the use of technology. The panel explored the topic through a series of hypothetical situations created by the use of technology in today's world. The diverse panel provided the perspectives of law practice risk management, defense, and counsel of practitioners and the developing ethics rules.

According to Doug Dexter, chair of the Technology in the Practice and Workplace Committee and partner at Farella Braun + Martel, the Center for Labor and Employment Law and its valued faculty "provided the perfect location and intellectual base to draw legal expertise to the program. As a result, the panelists and attendees engaged in thoughtful dialogue regarding the technology issues that are changing both the American workplace and the practice of law."

Several of the Center's board members actively participated in the Labor Center-ABA technology program, including Bredhoff's Larry Gold, Hon. Wayne Gold, director of the NLRB region, Darnley Stewart from Bernstein Litowitz, and Mark Risk. ●

Tenth Annual NYU Workshop on Employment Law for the Federal Judiciary

THE TENTH ANNUAL WORKSHOP ON Employment Law for Federal Judges took place on March 12-13, 2007. Sponsored jointly by NYU's Center for Labor and Employment Law and its Dwight D. Opperman's Institute of Judicial Administration, and the U.S. Federal Judicial Center, this program provides federal judges with the opportunity to examine the labor and employment issues that increasingly dominate their dockets.

Forty-five federal judges from around the country convened to discuss case management, evidence issues, use of experts, electronic discovery, labor law and ERISA Preemption, court-based/annexed mediation of employment disputes, class and collective actions, sex and racial discrimination and jury instruction.

Since the program's inception in 1998, the Workshop has aimed to bring together experienced judges with practitioners and academics to frame the discussion around federal judges' needs, and to provide guidance and time for reframing issues, theories, and perceptions about employment law cases.

Clockwise, from far left: Hon. Denise L. Cote, Pearl Zuchlewski, Ted Rogers

Mark Dichter, Darnley Stewart, Hon. Denny Chin

EEOC Commissioner Stuart Ishimaru

Hon. Bernice B. Donald, a district court judge for the Western District of Tennessee, Joseph D. Garrison of Garrison, Levin-Epstein, Chimes & Richardson, and Kathleen McKenna of Proskauer Rose opened the Workshop with their discussion of case management issues, in particular pro se cases, summary judgment, and technology. Acting as the panel's moderator, Garrison offered his thoughts on case management techniques and suggested models of interrogatories, requests for production, and protective orders.

The second panel, which included Hon. John G. Koeltl of the U.S. District Court for the Southern District of New York, Anne L. Clark of Vladeck, Waldman, Elias & Engelhard and Kenneth A. Margolis of Kauff, McClain & McGuire, discussed evidence issues and the use of experts. The panel focused on stray remarks, comparators, statistics, direct evidence, prior bad acts, Rule 412, the use of mental health experts, economists and CPAs on damages, "social framework" testimony and the use of statistical proof of discrimination.

Electronic discovery was the topic of the third panel. The Hon. Denise L. Cote, a district court judge for the Southern District of New York, Theodore O. Rogers Jr. of Sullivan & Cromwell and Pearl Zuchlewski with Kraus & Zuchlewski focused their presentations on the impact of new federal rules, the breadth of the problem of preservation duty, micro data, sanctions, and the inadvertent disclosure of privileged material. Following the third panel, Frederick D. Braid of Holland & Knight introduced the program's luncheon speaker, the Honorable Stuart J. Ishimaru, commissioner of the U.S. Equal Employment Opportunity Commission. Commissioner Ishimaru has recently joined the Labor Center's advisory board as an ex officio member.

Willis Goldsmith of Jones Day and Anton G. Hajjar of O'Donnell, Schwartz, and Anderson discussed NLRA and ERISA preemption issues in the fourth panel of the Workshop. Goldsmith and Hajjar focused their presentations on whether New York and California so-called "neutrality" laws are preempted by federal labor law and whether ERISA preempts state laws requiring the provision of health care insurance. Special issues in FLSA opt-in actions and EEOC representative suits, issues-only classes, nationwide classes, supervising settlements, and class action waivers in arbitration agreements were discussed in the Workshop's fifth panel, led by Southern District Judge Denny Chin, Mark Dichter from Morgan Lewis & Bockius and Darnley Stewart of Bernstein Litowitz Berger & Grossman.

The last panel of the day covered court-based or -annexed mediation of employment disputes. Southern District Judge Loretta A. Preska, Donna Malin of Johnson & Johnson and Wayne Outten led this panel and rounded off the first day of the Workshop.

March 13, the second day of the Workshop, began with a discussion of the cutting-edge developments in sex and racial discrimination cases. The Hon. Laura Taylor Swain, a district court judge for the Southern District of New York, Mindy G. Farber of Farber Legal and Scott J. Wenner of Schnader Harrison Segal & Lewis considered stereotyping, adequacy of anti-harassment policies, "disparate impact" challenges to subjective promotion decisions, family and medical leave, personal liability of corporate officers, the scope of §1981 actions, and third-party retaliation claims.

The Workshop's final panel focused on jury instructions, with the Hon. Frederick Block of the U.S. District Court for the Eastern District of New York, Robert L. Herbst of Beldock Levine & Hoffman, and Zachary Fasman of Paul, Hastings, Janofsky & Walker leading the panel. ●

Judging the Supreme Court Without Grinding a Political Axe

Samuel Estreicher, NYU School of Law

ESTABLISHING POLITICAL CRITERIA FOR JUDGING the Supreme Court's work is a hopelessly unsatisfying endeavor as long as we reserve the right to have different political views and legal philosophies and the Court continues to have a completely discretionary docket. I propose, instead, a more limited criterion that may generate a measure of agreement: In the cases that it accepts for plenary review, does the Court decide what it has to and no more than it has to?

In other words, does the Court reach out for issues that the case does not properly present or deliberately avoid deciding issues that are both properly presented by the case and important (as evidenced by the Court's grant of certiorari)?

In the accompanying table, I apply this criterion to labor and employment cases argued and decided during the Court's 2005-06 term. A score of 1 is awarded whenever the Court decides the case on the issue presented by the petition as framed by the ruling below and the facts of the case and does not purport to hold more than is necessary to address that issue.

If the Court purports to decide other, broader issues, it receives a score of 0. On the other hand, when the Court hears a case and fails to address a fairly presented issue on which it granted certiorari, it also receives a score of 0, because the Court made a discretionary choice to avoid deciding an important issue. The Court heard nine cases in the 2005-06 term in the labor and employment area. The maximum score it could have received was 9. It instead received a grade of 4.

I will apply the same criteria next summer to the Court's output during the 2006-07 term and see if it fares better. Stay tuned. ●

ESTREICHER'S JUDICIAL PERFORMANCE INDEX
2005-06 SUPREME COURT LABOR AND EMPLOYMENT DECISIONS

Case	Issue	Judicial Restraint	Non-Decision?	Net Score
IBP v. Alvarez, 126 S. Ct. 515 (2005)	Whether time walking and waiting to don and doff protective equipment is compensable time under Portal-to-Portal Act	Decided issues presented	No	1
Arlaugh v. Y&H Corp., 126 S. Ct. 1235 (2006)	Whether Title VII's 15-or-more employee requirement for employer coverage is jurisdictional	Decided issues presented	No	1
Domino's Pizza v. McDonald, 126 S. Ct. 1246 (2006)	Whether a sole shareholder and president of company denied a contract for racial reasons can sue under 42 U.S.C. § 1981 despite the absence of a contractual relationship with defendant	Decided issues presented	No	1
Garcetti v. Ceballos, 126 S. Ct. 1951 (2006)	Whether job-required speech is protected by the First Amendment	Decided broader issue of whether speech "pursuant to job duties" is protected by the First Amendment	No	0
Mohawk Industries v. Williams, 126 S. Ct. 2016 (2006)	Whether a corporation and its agents that do not conduct or participate in affairs of a larger enterprise constitute an "enterprise" under the Racketeer Influenced and Corrupt Organizations Act	Dismissed petition and remand for proceedings consistent with *Ideal Steel Supply Corp. v. Anza*, 126 S. Ct. 1991 (2006)	Yes	0
Whitman v. Department of Transportation 126 S. Ct. 2014 (2006)	Whether federal employee is barred by 5 U.S.C. § 7127(a) from pursuing constitutional claim against employer	Case remanded for lower court to explore jurisdictional and preclusion issues	Yes	0
United States v. Georgia, 126 S. Ct. 877 (2006)	Whether § 5 of the Fourteenth Amendment abrogates state's Eleventh Amendment immunity as applied to prison inmates suing under Title II of the Americans with Disabilities Act	Decided only whether complaint alleged constitutional violations without deciding independent force of ADA claims	Yes	0
Burlington Northern v. White, 126 S. Ct. 2405 (2006)	Whether a materially adverse change in terms of employment is sufficient to establish an "adverse employment action" under Title VII or whether an "ultimate employment decision" is needed	Decided broader issue, not presented by the facts, of whether an "adverse employment action" need be job-related at all, as long as it is reasonably likely to deter protected activity	Yes	0
Sereboff v. Mid Atlantic Medical Services 126 S. Ct. 1869 (2006)	Whether claim by a plan fiduciary for reimbursement from plan beneficiary from money received from third party constitutes "equitable relief" under § 502(a)(3) of the Employee Retirement Income Security Act	Decided issue presented	Yes	1

Dutch Labor Officials Explore the American System

APRIL 25, 2007—A GROUP OF 30 LABOR officials from the Dutch Ministry of Social Affairs and Employment attended a meeting with several U.S. Department of Labor managers from the New York region. The event was hosted by NYU's Center for Labor and Employment Law. Members of the Labor Center advisory board, along with several speakers from the U.S. Department of Labor, the National Labor Relations Board, and the Equal Employment Opportunity Commission helped lead an informative and captivating roundtable discussion. The Honorable Alvin Blyer and the Honorable Celeste Mattina, Regional Directors of the National Labor Relations Board and associate members of the Center's Advisory Board, as well as Patricia Rodenhausen, Regional Solicitor for the U.S. Department of Labor, also participated in the meeting with the Dutch labor officials. ●

Training Program for the U.S. DOL Regional Solicitor's Office

ON SEPTEMBER 15, 2006, THE CENTER FOR for Labor and Employment Law held its Training Program for Regional Solicitor's Office, U.S. Department of Labor. Marla S. K. Bergman from Jones Day and Robert L. Herbst from Beldock Levine & Hoffman addressed the audience. Ms. Bergman presented on special issues involving electronic discovery and electronic evidence, while Mr. Herbst spoke to the attending DOL attorneys about direct and cross-examination of witnesses at trial.

Patricia Rodenhausen, regional solicitor, Region II, U.S. Department of Labor, and co-chair of the Training Program complimented the group: "Once again, [the] energy and excellence at the Center has inured to the professional development and benefit of our lawyers." ●

Center and NLRB Co-Host Program on Recent Board Developments

Matthew Bodie,
St. Louis University School of Law

MARCH 23, 2007—INFLATABLE RATS and grad students were just two of the topics for discussion at the Center's Program on Recent NLRA Developments. The program was held March 23 at the NLRB's headquarters in Washington, D.C. Co-hosted by the National Labor Relations Board, it offered a special opportunity for Board attorneys, academics, former board members, and members of the union and management bar to share thoughts on cutting-edge issues in labor law.

The Labor Board's Margaret Browning Courthouse was packed, with several overflow rooms added, for the three-hour program. The format was two paper presentations by labor law scholars, followed by commentary from an eight-person panel. Professor Michael Harper of Boston University first presented his paper, "Some Examples of the Exercise of Administrative Discretion at the Bush Board." The paper examined recent NLRB decisions through the lens of Supreme Court administrative-deference opinions in *Chevron* and *Brand X*. Harper created a tripartite analytical structure to characterize Board statutory interpretations as (1) mandated by the NLRA, (2) the most reasonable interpretation of the NLRA, or (3) a reasonable exercise of administrative discretion delegated by Congress. Using this structure, Harper discussed the Board's recent decisions on Weingarten representation rules for non-union employees; the employee status of private university graduate students; bargaining units involving jointly employed workers; and the supervisory status of nurses. Harper concluded that when it comes to deciding the degree of deference, courts and commentators would need to rethink the bright-line distinction between an agency's statutory interpretation and its exercise of delegated discretion.

Professor Matthew Bodie of St. Louis University gave the second presentation on "Conflict Between the NLRB and the Courts: Resolution or Amplification?" In his discussion of recent Board and federal court decisions, Bodie drew a distinction between "high volume" and "low volume" conflicts. He noted that high volume conflicts, such as nurses' supervisory status and the use of inflatable rats, received

significant scrutiny from courts and would attract attention and controversy no matter how the Board ruled. On the other hand, Bodie cautioned against cases of low-volume conflict, in which courts undermine the Board's authority without attracting much attention. Bodie cited a recent spate of 10(j) injunction denials as a possible example of such low-volume conflict.

After these presentations, a panel of expert commentators offered their opinions on recent events. The panel included former Board members Marshall Babson (now at Hughes Hubbard & Reed), Robert Brame (now at McGuireWoods), and Sarah Fox (now at Bredhoff & Kaiser); former NLRB general counsel John Irving (now at Kirkland & Ellis); machinists union general counsel Allison Beck; IBEW general counsel Larry Cohen; and Board attorneys Harold Datz (chief counsel to Chair Robert Battista) and John Ferguson (associate general counsel, Division of Enforcement Litigation). NLRB Chairman Battista and General Counsel Ronald Meisburg also gave opening remarks, along with the Center's Ben Eisenman. ●

Preliminary Calendar 2007-08

NOVEMBER

November 2 — Board Meeting and Reception for Law Students

JANUARY

January 25 — Diversity Initiatives in the Practice of Labor and Employment Law

MARCH

March 18 — Board Meeting

March 18–19 — Workshop on Employment Law for Federal Judges

MAY

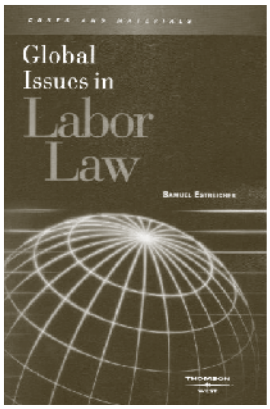
May 9 — Doing Business in Asia: The Labor and Employment Law Story

JUNE

June 5–6 — 61st Annual Conference on Labor and Employment Law

DATES ARE SUBJECT TO CHANGE. DETAILS AT WWW.LAW.NYU.EDU/CENTERS/LABOR

CENTER PUBLICATIONS



***Global Issues in Labor Law*, by Samuel Estreicher. Thomson-West, 2007. 244 pages.**

A New Approach to Global Labor Law

As the U.S. economy increasingly crosses international borders, global issues have become an emergent part of U.S. labor law practice. Thus, Sam Estreicher's new textbook, *Global Issues in Labor Law* (Thomson-West, 2007), is a welcome and much-needed contribution to the field.

Estreicher's aim is broader than a traditional comparative labor law textbook. Instead, he takes a more practical approach by focusing on global labor issues from the perspective of the U.S. labor lawyer. These issues are organized into five primary areas: (1) labor and immigration issues for U.S. businesses employing foreign workers in this country and U.S. businesses operating outside the country, (2) international labor standards used to assess working conditions in the United States and elsewhere, (3) the impact of international trade on workers and the role of labor standards in debates over trade, (4) U.S. litigation alleging foreign and labor abuses by U.S. businesses, and (5) comparisons of labor law regulation in developed countries.

The chapter on foreign workers addresses several high-profile issues. For example, the ability to remedy labor law violations against undocumented workers in the United States is explored through the *Hoffman Plastics* case. While the book principally relies on primary materials, it also includes helpful secondary readings on issues such as guest-worker programs. These questions, among others, touch on many of the central issues facing many U.S. employers in the modern, global economy as they are played out in the current legislative debate over immigration reform.

International labor standards and rights are the focus of the next two chapters. Starting with an examination of labor standards promulgated by the International Labour Organization (ILO) and the Organisation for Economic Cooperation and Development (OECD)—as well as company-generated standards such as those from Nike—the book shows both the importance of these standards and the difficulties that they face. Labor standards also play an important part in trade agreements, which the book explores through a helpful mix of trade instruments and secondary material.

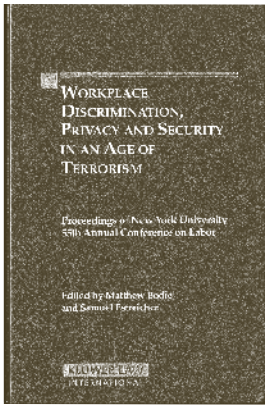
Litigation under the Alien Tort Act, 28 U.S.C. § 1350, a tool that workers' rights advocates have increasingly used, is a central part of the next chapter, which also looks at claims alleging breaches of an individual company's own standards. The final chapter, which focuses on comparative labor law, nicely brings together the previous material. The last chapter provides an informative description of several representative labor law regulatory regimes and addresses many of the major labor issues relevant in the global economy, including exclusive versus plural unionism, regulation of the recognition and bargaining processes, and union security.

The primary and secondary material in the book will provide students with both a solid grounding in the current state of the law and the needed background to discuss how the law should develop. These discussions will also benefit from the book's notes, which raise interesting and challenging issues related to the main material. The balance between case doctrine and policy makes *Global Issues in Labor Law* particularly useful in diverse class environments. The book would be an excellent addition to any traditional labor law course, as its emphasis on global issues fills an increasingly important gap in most labor law textbooks. Moreover, the book could

serve as the foundation for a seminar, providing the starting point for discussions on a large number of global labor and employment topics. In short, *Global Issues in Labor Law* does a wonderful job of introducing students to an often-ignored, but increasingly important, aspect of U.S. labor law practice.

In the same series, Samuel Estreicher is co-authoring *Global Issues in Employment Discrimination Law* with Brian Landsberg, and *Global Issues in Employment Law* with Miriam Cherry. Both will become available later in 2007. The Global Issues Series is published by Thomson-West.

— JEFFREY M. HIRSCH, UNIVERSITY OF TENNESSEE COLLEGE OF LAW



***Workplace Discrimination, Privacy and Security in an Age of Terrorism*, Samuel Estreicher and Matthew Bodie, Editors. Kluwer Law International, 2007. 544 pages.**

New Volume on Workplace Law in an Age of Terrorism

It has been more than six years since the terrorist attacks of September 11, 2001. Those attacks have drastically changed our approaches to national security, foreign policy, electronic privacy, and immigration policy. The waves rippling out from September 11 have seemingly touched every aspect of our lives, and the workplace is no exception.

Earlier in 2007, Kluwer Law International published *Workplace Discrimination, Privacy and Security in an Age of Terrorism*. The volume was based on papers presented at the Center's 55th Annual Conference on Labor and Employment Law, as well as select papers from law reviews. It was edited by Center Director Sam Estreicher along with Matthew Bodie of St. Louis University School of Law and a research fellow at the Center. The volume brings together works on this critical topic for lawyers, judges, legislators, scholars and citizens in this new age.

The book is divided into four sections: (1) workplace discrimination, (2) workplace privacy, (3) collective bargaining, and (4) physical and emotional security. Part I discusses the problem of workplace discrimination in the context of the war on terror. The papers include: a discussion of reasons why profiling based on nationality may in some cases be appropriate; a breakdown of the factors used by employment agencies and courts in assessing "English Only" workplace programs; a snapshot of the protections provided to immigrant workers in the post-9/11 period; an overview of the process for immigration by highly skilled immigrant workers under the H-1B visa process; and a discussion of the "enemy combatant" designation.

Part II of the volume concerns workplace privacy in an age of terrorism, and includes pieces on the "treasure trove" of electronic information that is generated about employees in general, as well as employer monitoring of employee email.

Part III is devoted to the issue of how collective bargaining has been affected in this new security-conscious environment. One chapter highlights the loss of unionized jobs caused directly by the September 11 attacks and analyzes the ways in which unions and employers can approach job loss caused by terrorism. There are also contrasting pieces on the effects of workplace association rights on security concerns. One chapter raises concerns about vulnerability to labor strikes in an age of terror and proposes legislation to better balance the concerns that labor, management, and the general public may have when strikes affect critical infrastructure. One contribution argues that national security concerns may have played too influential a role in reducing labor's freedom of association. Other chapters include a discussion of employment rights

following military leaves of absence, and a discussion of the effect of national security concerns on federal government employees, such as those in the Transportation Security Administration.

The papers in Part IV of this volume concern workers' heightened needs for physical and emotional security. One paper asks: Can a union negotiate for racial or ethnic profiling or screening of job applicants, based on security concerns? The authors of this article conclude that unions, facing liability for such a policy, will not bargain for it, especially since unions face no liability for failing to provide for the security of their members. There are also three chapters on approaches to employee emotional security: in particular, employee assistance programs and workplace mental injuries, such as post-traumatic stress disorder, and the role of the ADA and the FMLA in addressing worker stress.

Workers, management and governments are still adapting to the new environment of global insecurity. Change is inevitable; the manner and type of change is not. The Center here offers a volume that will provide practitioners, agencies and academics with a starting point for the debates to come.

— MATTHEW BODIE, ST. LOUIS UNIVERSITY SCHOOL OF LAW

***Behavioral Analyses of Workplace Discrimination*, Mitu Gulati and Michael Yelnosky, Editors. Kluwer Law International, publication date to be announced. 608 pages.**

Behavioral Analyses of Workplace Discrimination

The standard academic analysis of workplace discrimination takes a static perspective on the problem. Unsurprisingly, since litigation is the key event in most legal analyses, scholars tend to focus on the incident that is likely to be the subject of litigation —typically, a termination or a failure to hire. The goal of the editors of this volume —a Festschrift sponsored by the NYU Labor Center in honor of the late Harvard law professor David Charny—was to encourage a move to a dynamic perspective on workplace discrimination. To understand how to remedy workplace discrimination, Charny believed, one needed to not only look at the incident in question, but also the events that generated it. And that means paying attention to workplace cultures, structural features of the workplace and the broader economy, and the incentives of workers and employers. For example, to the extent to which employees expect employers and co-workers to harbor biases, they will adjust their behavior to counteract those biases. Employers and co-workers, in turn, will anticipate those strategies and adjust their behavior accordingly. Moreover, the penalties that can be imposed through legal regulation of the workplace encourage (and discourage) certain behaviors as well. Thus, to analyze discrimination in the workplace, one has to understand the foregoing dynamics. Are the incidents that are the focus of more conventional analysis typical of what is taking place at the workplace or merely outlier events that should not be the subject of legal regulation? To continue with the example, the fact that there are very few incidents of discrimination at a company may not mean that all is well there; instead it may simply mean that minority and female employees have exerted a great deal of additional effort to counter discriminatory attitudes.

The authors in this volume were invited to participate because each of them takes a unique and different perspective on how to approach the problem of making the analysis of workplace discrimination more dynamic. Their approaches span the spectrum from conventional legal analysis to critical race theory to psychology and

economics. Nevertheless, each article connects to the others because the underlying theme of each one is the attempt to understand the micro-analytics of the workplace and, more specifically, to understand how legal regulation affects those dynamics.

The affection and admiration that David Charny's friends, colleagues, and students had for him prompted this volume. Sam Estreicher and the Center for Labor and Employment Law at NYU got the ball rolling by organizing an initial gathering approximately four years ago, at which rough ideas were discussed. Over the ensuing four years, a large subset of those ideas resulted in full articles, and it is those articles that fill this volume and provide a foundation for what will hopefully prove to be a robust inquiry into the relationship between law and the internal dynamics of the workplace.

— MITU GULATI, DUKE UNIVERSITY SCHOOL OF LAW, AND MICHAEL YELNOSKY, ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW

So noted:

Shifting from Defined Benefit to Defined Contribution Plans

"The rationale of the national public-private pension system that presently covers—and has consistently covered—just under half of the Americans who work for their living is this: working people from business managers to stock clerks depend on the continuing stream of income they earn each working year to sustain themselves and their dependents; it is not in the interest of enterprises nor socially desirable to require older Americans to sustain themselves in their later years by working until the day they die; and Government through Social Security and enterprises through tax-qualified pension arrangements should therefore provide individuals a means, over a working career, of earning a retirement benefit that enables them to approximate their pre-retirement standard of living."

(11 Lewis & Clark L. Rev. 331 (2007))

—Sam Estreicher and Laurence Gold's *The Shift from Defined Benefit Plans to Defined Contribution Plans* was first presented at the Center for Labor and Employment Law's 59th Conference on Labor, May 18, 2006. The authors argue that the pervasive shift from DB to DC plans has resulted in a private pension system that does not meet the traditional goals of the pension policy. They urge improvements in the regulation of both defined benefit and defined contribution plans.

IN MEMORIAM

EVERETT E. LEWIS (August 12, 1924–January 12, 2007)

Everett E. Lewis, a longtime member of the Advisory Board of the Center for Labor and Employment Law, died on January 12, 2007, after a long battle with cancer. Everett was the senior partner in the firm of Lewis, Clifton & Nikolaidis and practiced union-side labor law for almost 60 years.

Everett was born in New York City, and basically never left. After service in the U.S. Army Air Force in World War II, Everett returned to the City to finish school. He received his undergraduate degree from the City College of New York and a law degree from NYU School of Law where he was an editor of the law review. For decades, Everett represented District 3 of the IUE and numerous IUE locals in the New York-New Jersey area. He also served as counsel to the IUE National Pension and Welfare Funds, as well as Special Counsel to the International President. As a partner in several labor law firms, Everett represented, at one time or another, workers in every conceivable industry—from garment workers to teamsters; nurses to police officers; insurance workers to postal employees. In addition to the Center for Labor and Employment Law, Everett was a board member of the Workers Defense League, the Cabrini Hospice and various other charitable organizations.

Everett was a passionate advocate for social justice, as well as a man of elegance and grace. He loved his work and he loved his clients. At 82, Everett would come into the office the same as he did at 32—full of fight and ready to do battle—whether it was fighting a plant closing in New Jersey that affected a thousand workers or arbitrating a grievance in Long Island that involved the seniority rights of a single employee. As one of his partners, I can report that Everett was in the office just three weeks before his death. Having just won an arbitration for a group of factory workers, he wanted to make damn sure that they received their back pay before Christmas. And they did.

At 82, Everett would come into the office the same as he did at 32—full of fight and ready to do battle.

— **DANIEL CLIFTON**, LEWIS, CLIFTON & NIKOLAIDIS, P.C.

JUDITH P. VLADECK (August 1, 1923–January 8, 2007)

There is a long list of superlatives and firsts that accompanies the name of Judith P. Vladeck, whose passing last January we mark with great sadness. She was a pioneer, a distinguished employment and labor law litigator, and an ardent and successful advocate of workers' rights. As important to her as her own legal work were her tireless efforts to teach others, and it is those contributions in particular that the NYU Center for Labor and Employment gratefully acknowledges.

Judith Vladeck was one of the founding voices of the NYU Annual Conference on Labor, a frequent speaker and a driving force. With compelling and moving presentations, she inspired audiences there and at countless other programs and panels. Judith Vladeck mentored law students, associates, partners, union counsel, and even—dare we say it—her adversaries. She held up to all a striking example of how fierce devotion to one's clients and to a cause is fully consistent with the highest ethical principles, the most painstaking research, thoughtful writing and oral advocacy. She devoted particular attention to the underrepresented in the legal profession—women and lawyers of color—urging them not to be defeated by bias and supporting them in their cause.

Her landmark cases are legion. In 1975, in one of the first cases challenging discrimination in academia, she represented a female plaintiff who was denied tenure at Pace University. When the university lawyers argued that the plaintiff was a troublemaker who devoted too much time to challenging the system, Mrs. Vladeck responded, "The only way women are tolerated is if they are supine, silent, and submissive." In her case against the City University, Mrs. Vladeck traced salary histories for more than 5,000 female faculty and professional employees and obtained a ruling that the university had discriminated for fifteen years.

Other prominent cases included her victory on behalf of female employees at Western Electric in one of the largest equal pay cases. Mrs. Vladeck represented the not-for-profit organization, Nontraditional Employment for Women ("NEW") and obtained a major settlement securing construction jobs for women from contractors building Battery Park City. The settlement included funding used to build the NEW headquarters and training center dedicated as the Judith P. Vladeck Center for Women.

Mrs. Vladeck received her bachelor's degree from Hunter College in New York in 1945 and graduated from Columbia University School of Law in 1947, a time when she was told that, "Women students were taking up space that should have been reserved for [male] veterans." After having three children and working as a part-time lawyer, Judith Vladeck in 1957 joined Vladeck, Waldman, Elias & Engelhard, a firm that she had co-founded with her late husband, Stephen Vladeck, also a highly regarded labor lawyer.

Mrs. Vladeck received numerous awards, including the Margaret Brent Women Lawyers of Achievement Award in 2002, and the Outstanding Achievement Award from the Lawyers Coordinating Committee of the AFL-CIO in 1998. Together with Chief Judge Judith Kaye and Dean Barbara Black, Mrs. Vladeck in 2006 was recognized by the New York City Bar Association as a pioneering woman attorney. Columbia Law School and Hunter College both honored Mrs. Vladeck as an outstanding alumna.

As students of labor and employment law, we acknowledge with gratitude her many accomplishments. She will be missed.

— **DEBRA RASKIN,** VLADECK, WALDMAN, ELIAS & ENGELHARD, P.C.

MORRIS P. GLUSHIEN (October 15, 1909–May 19, 2006)

When I was a young law student at NYU, I went to a labor law seminar where Deputy General Counsel of the AFL-CIO, Tom Harris, spoke. After the lecture, I asked him about the opportunities for a young lawyer to work for a labor union. His response was "forget it unless your father is a union president."

Well, my father was not a union president, but he was a business agent for a small local of the Amalgamated Clothing Workers, and, while I was in my second year, my father did manage to get me a job as a law clerk, working after school hours for the Amalgamated's General Counsel, then Jack Sheinkman.

Right before I graduated, Jack offered me a job, but as luck would have it, Jack said, "Before you say yes, you should meet the best labor lawyer in New York—the General Counsel of the ILGWU—Morris Glushien." I met Morris and he offered me my first job as a lawyer.

When I first met him, I knew that he had been an editor of the *Cornell Law Review*; that he was a former professor of law at Cornell Law School, had been the associate general counsel of the National Labor Relations Board, and had argued many cases before the Supreme Court.

What I did not know was that Morris had two wonderful daughters and a formidable wife. I also did not know that while he was no longer a law professor, he could never give up teaching, and that he was so confident a person that ego and bravado were completely absent.

He was so confident a person that ego and bravado were completely absent.

As time went by, I learned why and just how many people admired him—people like Steve Vladeck, Emil Schlesinger, Iz Katz, Bill Isaacson, Wilber Daniels, Jack Glauberman, Bud Mandelstam, David Dretzin, Everett Lewis, Bill Englander, Larry Joseph, David Levitan, Julie Topol, Max Zimny, Ed Spearer—his friends Jay Topkis, Marvin Frankel and Jack Weinstein—and Dubinsky himself.

During the next five years, I was transformed. He stood next to me during my very first oral argument—before the legendary Judge Edward Weinfeld. He guided me through my first arbitration and my first labor board case. I sat beside him at his desk almost every day, while he edited everything I wrote, answering his probing questions about the case, listening to him hum away, chewing on a paper clip or the top of his cherished black fountain pen, writing and rewriting in his beautiful penmanship. Just when I was convinced we were done he would invariably say, "Let's do another draft."

Little by little, I understood what he wanted me to do: To set the highest possible personal and professional standards for myself and to never rest until I could truly say: "This is the very best I can do."

While we sat there, we were occasionally interrupted by a call from his wife Ann. There, I learned the real lessons of life. I can hear him now: "Yes, Darling," "Is there anything troubling you, dear?", "How is Ruthie?", "How is Mina?", "I love you."

Morris was my teacher and mentor and he was that to many, and I want to thank him for all of us.

—**JEROME B. KAUFF**, KAUFF, McCLAIN & McGUIRE

CENTER FOR LABOR AND EMPLOYMENT LAW

ADVISORY BOARD

Welcome NEW MEMBERS

A plaintiff-side employment lawyer with Bernstein Litowitz Berger and Grossman, **Darnley D. Stewart** has spoken at numerous NYU Conferences, and Trial Lawyers for Public Justice named her a Finalist for "Trial Lawyer Of The Year" for her work on the GMAC Consumer Finance Discrimination Litigation.

Former NLRB member **Hon. Marshall B. Babson** now works with Hughes Hubbard & Reed and is committee member for the Practice and Procedure Committee of the Labor and Employment Law Section of the American Bar Association.

Member of the American Bar Association's Committee on Federal Labor Standards Legislation, **Michael I. Bernstein** is a distinguished management-side counsel at Bond, Schoeneck & King.

A partner at Seyfarth Shaw since December 2006, in 2006, **Robert S. Whitman** received a Cornerstone Award from Lawyers Alliance for New York in recognition of his pro bono work on behalf of not-for-profit organizations throughout New York City.

NEW EX OFFICIO MEMBERS INCLUDE:

Chairman of the National Labor Relations Board **Hon. Robert Battista** was appointed by President Bush and confirmed by the Senate in 2002.

Confirmed by the Senate in 2006, **Hon. Ronald Meisburg** is General Counsel of the National Labor Relations Board.

In November 2003, **Commissioner Stuart J. Ishimaru** was sworn in as a commissioner of the U.S. Equal Employment Opportunity Commission for a term expiring July 1, 2007.

Regional director of the NLRB in Baltimore, **Hon. Wayne Gold** joins the Center's Advisory Board as an associate advisor.

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COMMUNITY NEWS

MARK BROSSMAN (Schulte Roth & Zabel) is co-recipient of the 2008 Judge William Groat Award. Cornell University's School of Industrial and Labor Relations annually presents the Groat Award to an ILR graduate who demonstrates exceptional professional accomplishment in the field of industrial and labor relations and has done outstanding service to the school. The Award is named for William Groat, the New York State Supreme Court justice instrumental in founding the School of Industrial and Labor Relations and drafting its charter. This year's other co-recipient is Bob Molofsky (general counsel at the Amalgamated Transit Union).

ERNEST ALLEN COHEN (former general counsel for Masters, Mates & Pilots, ILA, and AFL-CIO) now serves on the Board of Directors of AHL Shipping Company and AHL Holdings Inc., an employee-owned oil tanker company based in San Antonio, Texas. Ernest Cohen has retired from the practice of law and will be a Study Group Leader at the Osher Lifelong Learning Institute at the University of Arizona, co-leading a course this fall on Slavery During the American Revolution, and will co-lead a course in the spring on Great Trials of the Centuries.

In January 2007, **EUGENE S. FRIEDMAN** (Friedman & Wolf) was appointed to Governor Eliot Spitzer's Transition Team.

On July 1, 2007, **PETER J. HURTGEN**, former partner at Morgan Lewis & Bockius, joined Stop & Shop Supermarket Companies, a daughter company of Royal Ahold N.V., an international supermarket operator based in Amsterdam, The Netherlands.

On March 3, 2007, **MERYL R. KAYNARD** (senior vice president and associate general counsel at JPMorgan Chase & Co.) was appointed to the New York City Commission on Women's Issues.

JEANNE MIRER joined **EUGENE EISNER**'s firm, Eisner & Associates, P.C. She has been a partner in a prominent plaintiff's law firm in Detroit for over 20 years and has just relocated to the New York metropolitan area.

Contact the Center

NYU Labor & Employment Law

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New York University School of Law
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New York, NY 10012

Phone: (212) 998-6242
Fax: (212) 995-4036

Visit us at www.law.nyu.edu/centers/labor

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Ben Eisenman
Manager of Centers
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(212) 998-6242

Nora Strecker
Newsletter Editor; Assistant to Ben Eisenman
Student of Labor Economics
nms286@nyu.edu
(212) 992-8820

Beginning August 2007, **DAN O'GORMAN** will start as an assistant professor at the University of Central Florida. He will teach Contracts, Employment Discrimination Law, and Law and Society in the Department of Criminal Justice and Legal Studies. He will also serve as "Of Counsel" to Ford & Harrison.

RONALD H. SHECHTMAN became managing partner of Pryor Cashman (formerly Pryor, Cashman, Sherman & Flynn) as of January 1, 2007.

JUSTIN M. SWARTZ (Outten & Golden) was promoted to partner in October 2006.

ROBERT S. WHITMAN of Seyfarth Shaw authored an "Outside Counsel" column for the *New York Law Journal* on June 20 entitled "Ex Parte Contacts With an Adversary's Former Employees."

PEARL ZUCHLEWSKI (Kraus & Zuchlewski) is member of the NASD National Arbitration and Mediation Committee and served on the NASD committee that drafted the Code of Arbitration Rules governing statutory discrimination claims.

Congratulations

to our Advisory Board Members who are also Fellows, Honorary Fellows and Emeritus Fellows of the College of Labor and Employment Lawyers

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Hughes Hubbard & Reed

Hon. Robert Battista
National Labor Relations Board

Michael I. Bernstein
Bond, Schoeneck & King

Michael Delikat
Orrick, Herrington & Sutcliffe

Mark Dichter
Morgan Lewis & Bockius

Samuel Estreicher
Dwight D. Opperman Professor of Law,
NYU School of Law
Jones Day

Zachary D. Fasman
Paul, Hastings, Janofsky & Walker

Joseph D. Garrison
Garrison, Levin-Epstein Chimes & Richardson, P.C.

Willis J. Goldsmith
Jones Day

Jonathan P. Hiatt
AFL-CIO

Peter J. Hurtgen
The Stop & Shop Supermarket Companies

Jerome B. Kauff
Kauff, McClain & McGuire

Jeffrey I. Kohn
O'Melveny & Myers

Robert Lewis
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Hon. Wilma B. Liebman
National Labor Relations Board

Hon. Ronald Meisburg
National Labor Relations Board

Wayne N. Outten
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Theodore O. Rogers Jr.
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Pearl Zuchlewski
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Kraus & Zuchlewski

To Our Members

This newsletter is the premier platform for our community.

Please be sure to send the Center your news updates—anything from relocations to career changes and recent achievements.

Send your news updates to Ben Eisenman at (212) 998-6242 or ben.eisenman@nyu.edu, or directly to his assistant Nora Strecker at nms286@nyu.edu or (212) 992-8820.

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THE CENTER FOR LABOR AND EMPLOYMENT LAW
was created in 1996 to establish a nonpartisan forum for debate and study of the policy and legal issues involving the employment relationship. The Center has four major objectives:

1. To promote workplace efficiency and productivity, while at the same time recognizing the need for justice and safety in the workplace and respecting the dignity of work and employees

2. To promote independent, nonpartisan research that would improve understanding of employment issues generally, with particular emphasis on the connections between human resources decisions and organizational performance

3. To sponsor a graduate program for the next generation of law teachers and leading practitioners in the field

4. To provide a forum for bringing together leaders from unions, employees and companies, as well as representatives of plaintiff and defense perspectives, for informal discussions exploring new frameworks for labor-management relations, workplace justice, fair and efficient resolution of employment disputes and representation in the workplace

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