

NYU Labor & Employment Law

NEWSLETTER

OF THE CENTER FOR LABOR AND EMPLOYMENT LAW

New York University School of Law

NYU 61st Annual Conference Looks at Global Issues

“GLOBAL LABOR LAW FOR THE PRACTICING Lawyer” was the theme of New York University’s 61st Annual Conference on Labor, the nation’s premier forum for consideration of workplace issues, which took place June 5-6, 2008. ● The

Conference initially focused on the process of “seconding” workers abroad. In sending U.S. workers abroad or bringing non-U.S. workers here, what are best practices in terms of choosing among and integrating applicable employment laws and regulatory requirements? How does one best navigate U.S. immigration and trade adjustment laws to obtain and retain people from abroad? ● Taking advantage of a diverse multicultural workforce is both a challenge and an opportunity for global employers. Some of the questions discussed in this segment were: are diversity initiatives best handled at the local level or at the global

1 61ST ANNUAL CONFERENCE ON LABOR Conference discusses Global Labor Law issues

3 DIVERSITY INITIATIVES IN THE PRACTICE OF LAW Program seeks to bridge the diversity gap in the practice of law

4 DOING BUSINESS IN CHINA NYU tells the Chinese labor law story

5 DEFENDING UNIONS Evening roundtable discusses labor unions as defendants

6 11TH ANNUAL WORKSHOP ON EMPLOYMENT LAW FOR THE FEDERAL JUDICIARY IJA-Labor Center collaboration explores issues dominating federal dockets

8 JUDICIAL REVIEW Evaluating the Supreme Court’s employment decisions without grinding a political axe

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The Center for Labor and Employment Law



New York University School of Law



In-House and Management attorneys discuss the design of global benefits and employment policies for multinational enterprises. Left to right: Gary Siniscalco, Meryl Kaynard, Erika Collins, Gena Palumbo, Martin Schmelkin

level for multinational companies? Will discrimination laws in various countries hamper a uniform approach? Can relatively uniform benefits plans be drafted and implemented for a worldwide workforce? In particular, how should social security contributions and credits be administered to maximize benefits for employees?

NGOs and human rights litigation are likely to occupy center stage in the years ahead, Does it make sense to respond to increasing demands of NGOs by establishing strict labor and employment standards for multinational enterprises? To what extent should these standards exceed standards set by local laws? Should they be keyed to international instruments like ILO Conventions? Should they provide for monitoring and audits by outside organizations?

What can we learn from the Europeans? How do companies operating in continental Europe deal with unions and works councils in designing and implementing new technologies and policies adversely affecting staffing levels? What is the labor and employment picture for U.S. and European companies operating in China, Vietnam, Thailand, and other emerging Asian economies? Is the U.S. the worldwide laggard in workplace privacy and whistleblower protection laws?

The final session featured a special presentation on ethical issues in a multi-jurisdictional practice by plaintiff lawyer Pearl Zuchlewski and her management counterpart, Theodore Rogers—both members of the Advisory Board of NYU's Center for Labor and Employment Law.

Our luncheon speakers were Professor Lance Compa (Cornell University, ILR School) and Hon. Barry Kearney, Associate General Counsel for Advice, National Labor Relations Board. Hon. Wilma Liebman, Member of the National Labor Relations Board and a member of the NYU Labor Center Advisory Board, acted as moderator on the second day of the program. ●

61st Annual CONFERENCE ON LABOR

June 5–6, 2008

- 1st Panel**

Negotiating Employment Contracts for Cross-Border Engagements: Drafting, Benefits & Choice of Law Issues
- 2nd Panel**

Navigating the Immigration and Trade Laws for Cross-Border Engagements

 - A. Immigration
 - B. Trade Adjustment Assistance
- 3rd Panel**

Designing Global Benefits and Employment Policies for the Multinational Enterprise

 - A. Global Diversity Initiatives
 - B. Global Benefit Plans
 - C. Social Security Integration
- 4th Panel**

Codes of Conduct for the Multinational Enterprise

 - A. The Evolution of Global Labor Rights
 - B. Implementation Issues in Administering Codes of Conduct
- 5th Panel**

Dealing with Unions and Works Councils Abroad
- 6th Panel**

Privacy and Whistleblower Protections Abroad
- 7th Panel**

Doing Business in Asia: The Labor and Employment Story
- 8th Panel**

Ethical Issues in a Multi-jurisdictional Practice & Restrictions on Legal Practice in Foreign Countries



Far left:
Hon. Judith Kaye

Left:
Diversity Conference
Coordinator
Meryl Kaynard

Bridging the Diversity Gap in the Practice of Law

IMPLEMENTATION OF DIVERSITY INITIATIVES IN law practices was the topic during the Diversity Initiatives in the Practice of Law Program on January 25, 2008. Leading practitioners with experience in this particular field came together in the Law School's Pollack Colloquium to discuss their various organizations' programs and suggest areas for necessary improvement.

To start off the program, Meryl Kaynard, head diversity officer with Orrick, Herrington & Sutcliffe, formerly of JPMorgan Chase & Co. and an advisory board member for the Center for Labor and Employment Law, introduced Hon. Judith Kaye, Chief Judge of the New York Court of Appeals, who gave the keynote address.

The first part of the half-day program was devoted to the "Big Picture", as well as various particular problems, such as data collection regarding diversity in law practices. Raymond Lohier, chief of the securities fraud unit for the United States Attorney's Office in New York and founding member of the Center's recent graduate group, moderated the first panel, consisting of Alex David, Director of Diversity for the Association of the Bar for the City of New York, Katherine Frink-Hamlett, President of Frink-Hamlett Legal Solutions, Inc., a legal placement firm, Arthur Matthews, a principal partner of Matthews & Matthews Consulting as well as an adjunct Assistant Professor at NYU, and Brande Stellings, Senior Director of Catalyst Inc., a nonprofit membership organization working to expand opportunities for women in business.

ISSUES DISCUSSED:

- What should be the diversity goals and benchmarking measures for law firms and corporate law departments?
- Are there problems with the availability of qualified individuals to meet diversity objectives?
- What are the best strategies for recruitment, advancement and retention?
- What are the differences between private and public sectors and between outside law firms and internal legal departments?
- How to effect the needed changes in organizational culture?

Part two of the program, moderated by Meryl Kaynard, focused on "What Works/What Doesn't?" The panel consisted of Advisory Board Member Michael Delikat, partner at Orrick, Herrington & Sutcliffe, Joseph Dilg, Managing Partner at Vinson & Elkins, Beth Kaufman, Partner at Schoeman Updike & Kaufman, Donna Malin, Vice President of Law for Vistakon, a division of Johnson & Johnson Vision Care, Inc. and Advisory Board Member for the Labor Center, Meredith Moore, Director of Global Diversity for Weil, Gotshal & Manges, Jeff Reitman, Head of Global Compliance for JPMorgan Chase & Co., and Federico E. Virella Jr., Executive Assistant U.S. Attorney (S.D.N.Y.). The panel explored:

- Various law firm diversity programs
- Improving performance review; mentoring programs
- Addressing work-life balance
- Issues unique to government practice
- Issues unique to in-house practice
- Law school initiatives. ●

NYU Tells the Chinese Labor Story

A SPECIAL PROGRAM ON THE CHALLENGES facing multinational firms in China took place on May 9, 2008. With the help of Michael J. Gray of Jones Day, leading companies with operations in China shared their experiences before a packed Pollack Colloquium for the Center's program on "Doing Business in China: The Labor and Employment Law Story."

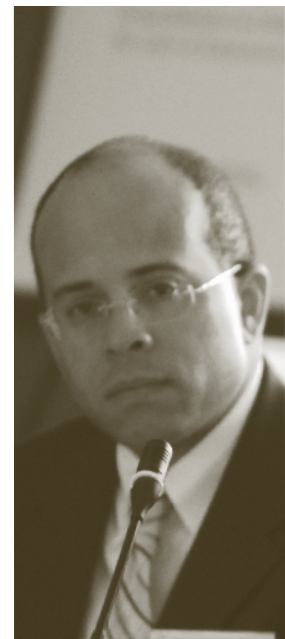
Professor Benjamin Liebman of Columbia University School of Law kicked off the conference with the history of businesses doing business in China and the government's regulatory response. This was followed by a panel discussion on the new China employment contracts law moderated by Terry Sharp of The Home Depot Inc., and consisting of Jack Bailey, labor counsel for Eastman Kodak Company, Mark Nordstrom, counsel for General Electric Company, Martin Schmelkin, Vice President, Associate General Counsel for Goldman, Sachs & Co., and Henry Valdez, managing counsel for McDonald's Corporation for its Asia, Pacific, Middle East, and Africa (APMEA) group.

Where do labor unions fit in the overall labor and employment picture and which model will Chinese labor unions follow: the American model, the European, or a new paradigm altogether? Professor Samuel Estreicher moderated the panel, which included Jack Bailey of Eastman Kodak, Earl Brown of the Washington, D.C.-based Solidarity Center, and Henry Valdez of McDonald's Corporation.

Where do labor unions fit in the overall labor and employment picture and which model will Chinese labor unions follow?

During the luncheon, Professor Jerome Cohen of New York University School of Law, the dean of Chinese legal studies in the U.S., gave remarks.

After lunch, the Conference turned to the role of law firms. Mark Dichter, Labor Center member and partner of Morgan, Lewis & Bockius in Philadelphia, acted as



NYU'S DOING BUSINESS IN china

THE LABOR AND EMPLOYMENT LAW STORY

May 9, 2008

**Michael J. Gray (Jones Day),
Coordinator**

- 1st Panel**
Doing Business in China: A Historical Perspective
- 2nd Panel**
The New China Labor and Employment Law: A Practical Perspective
- 3rd Panel**
Dealing with Unions in China: the U.S. Model, the European Model, or a New Paradigm?
- 4th Panel**
The Role of Counsel in Assisting Multinational Companies in China
- 5th Panel**
Roundtable on Recent Issues Affecting Multinational Companies Doing Business in China



Far Left: Michael J. Gray (Jones Day)

Left (upper): Jack Bailey (Eastman Kodak) & Mark Nordstrom (General Electric)

Left (lower): Henry Valdez (McDonald's)

Above: Terry Sharp (The Home Depot)



moderator for a panel that included Shanghai-based Joseph Chan of Pillsbury Winthrop Shaw Pittman, San Francisco-based Darren Gardner of Seyfarth Shaw, Shanghai-based K. Lesli Ligorner of Paul, Hastings, Janofsky & Walker and Winston Zhao of Jones Day in Shanghai. The panel discussed the role of counsel in assisting multi-national companies in China. The last panel of the day was a roundtable discussion moderated by the Center's new executive director, Torrey Whitman, addressing new issues looming. Orrick, Herrington & Sutcliffe's Michael Delikat, also a Labor Center member, Rob Landau, Vice President of Human Resources for the Sports and Olympics Division of NBC Universal, Inc., and Professor Renqiu Yu of Purchase College covered such varied topics as the Beijing Olympics, the new Alternative Dispute Resolution law, effective May 1, 2008, and the protection of confidential information. As Labor Center member and leading plaintiff counsel Wayne Outten remarked, "In my years of attending hundreds of legal conferences, this program is one of the best and most informative I have ever attended." ●

Defending Unions

Mitchell H. Rubinstein (NYS United Teachers)

ORGANIZED BY MITCHELL RUBINSTEIN of New York State United Teachers and adjunct professor at St. John's and New York law schools, the Center assembled leading union-side lawyers on the topic of unions as defendants, before an audience of NYU Law students.

J. Bruce Maffeo, a partner at Meyer, Suozzi, English & Klein, P.C., discussed defending unions in criminal investigations and litigation. Richard A. Brook, partner at Meyer, Suozzi, English & Klein, spoke about recent cases under the Labor Management Reporting and Disclosure Act (LMRDA) and about important defense strategies used in defending unions.

Additionally, NYU Law Adjunct Professor Ronald Schectman, who also serves on the Advisory Board of the Center for Labor and Employment Law and is managing partner of Pryor Cashman, spoke about defending unions in duty of fair representation cases. He discussed important developments and highlighted several recent administrative and court decisions. Mitchell Rubinstein moderated this panel and spoke about defenses unions can raise under New York law if they are organized as unincorporated associations. ●

Eleventh Annual Workshop on Employment Law for the Federal Judiciary

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THE ELEVENTH ANNUAL WORKSHOP ON Employment Law for Federal Judges took place on March 18-19, 2008. Sponsored jointly by the Center for Labor and Employment Law, the Dwight D. Opperman Institute of Judicial Administration, and the Federal Judicial Center, the Workshop provides a select group of federal judges—court of appeals judges, district judges, and magistrate judges—with the opportunity to examine the labor and employment issues that frequently appear on their dockets.

Thirty-seven federal judges from around the country convened to discuss case management, evidence, use of experts, electronic discovery, labor law and ERISA preemption, class and collective actions, court-based or -annexed mediation of employment disputes, 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, to provide guidance and time for reframing issues, theories, and perceptions about employment law cases.

Hon. Mark Bennett of the Northern District of Iowa and Hon. Bernice B. Donald of the Western District of Tennessee opened the Workshop with a discussion of case management issues, in particular pro se cases, summary judgment, and technology. As the only judges-only panel in the program, Judge Bennett and Judge Donald offered their insights into case management techniques.

The second panel, which included Hon. John G. Koeltl (U.S. District Court for the Southern District of New York), Anne L. Clark of Vladeck, Waldman, Elias & Engelhard, P.C. and Robert Whitman of Seyfarth Shaw, discussed evidence issues and use of experts. Their discussion focused on stray remarks, comparators, statistics, direct evidence, prior bad acts, Rule 412, mental health experts, economists and CPAs on damages, "social framework" testimony, and statistical proof of discrimination. Judge Koeltl, Ms. Clark and Mr. Whitman jointly presented their paper "Federal Rule of Evidence 412 and Expert Testimony in Employment Cases."



Electronic discovery was the topic of the third panel. Hon. Shira A. Scheindlin, U.S. District Court Judge for the Southern District of New York, Theodore Rogers, Jr. of Sullivan & Cromwell and Pearl Zuchlewski of Kraus & Zuchlewski focused their presentations on the impact of new federal rules, determining the breadth of the preservation duty, microdata, inadvertent disclosure of privileged material and sanctions.

Following the third panel, Frederick D. Braid of Holland & Knight introduced the program's luncheon speaker—Hon. Lee H. Rosenthal, U. S. District Court Judge for the Southern District of Texas. Judge Rosenthal is the chair of the Advisory Committee for federal rules of civil procedure.

In the fourth panel, Hon. Laura Taylor Swain of the Southern District of New York, Prof. Kerri L. Stone of Florida International University College of Law and Scott J. Wenner of Schnader Harrison Segal & Lewis discussed cutting-edge developments in sex and racial discrimination cases. In particular, they focused on stereotyping, adequacy of anti-harassment policies, "disparate impact" challenges to subjective promotion decisions, family and medical leave, personal liability of corporate officers, scope of §1981 actions, and third-party retaliation claims.

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 of New York Judge Denny Chin,



Mark Dichter of Morgan, Lewis & Bockius and Darnley Stewart of Giskan, Solotaroff, Anderson & Stewart.

The last panel of the day covered court-based or -annexed mediation of employment disputes. A panel led by District court judge for the southern District of New York Denise L. Cote, Joseph D. Garrison of Garrison, Levin-Epstein, Chimes, Richardson & Fitzgerald, Wayne Outten of Outten & Golden and Lisa Warren of Johnson & Johnson rounded off the first day of the Workshop.

March 19, the second day of the Workshop, began with “The Evidence on ‘Unconscious Discrimination,’” a new feature of the Workshop organized by Labor Center Research Fellow, Prof. Michael Yelnosky of Roger Williams University School of Law. According to Prof. Yelnosky, “A growing body of literature suggests that most people are biased in favor of whites, but that these biases are ‘implicit’ or unconscious.” Hon. Mark Bennett (U.S. District Court for the Northern District of Iowa), Hon. Bernice B. Donald (U.S. District Court for the Western District of Tennessee), Ruthie Nelson White of Jones Day and Prof. Yelnosky reviewed the evidence suggesting the existence of this implicit bias and the evidence suggesting a relationship between the implicit bias and discriminatory behavior. The panel concluded with a discussion of the implications of this research for employment discrimination doctrine.

The Workshop’s eighth and final panel focused on jury instructions, with Hon. Frederic Block of the Eastern District of New York, Patrick W. Shea of Paul, Hastings, Janofsky &



Far left: Prof. Michael Yelnosky

Above left: Ruthie Nelson White, Hon. Bernice Donald and Hon. Mark Bennett

Above: In the audience was, among others, Commissioner Stuart Ishimaru of the U.S. EEOC (foreground).

Walker, and Robert L. Herbst of Beldock Levine & Hoffman leading the panel.

Every year the Center for Labor and Employment Law, the IJA and the Federal Judicial Center jointly sponsor the Workshop on Employment Law for Federal Judges, and the Federal Judicial Center confirms that the Workshop is one of their most highly rated programs. ●

Supreme Court Scores: Second Annual Judicial Performance Index

Samuel Estreicher, NYU School of Law

POLITICAL CRITERIA FOR JUDGING THE SUPREME Court's work are hopelessly unsatisfying 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 have proposed, instead, a more limited criterion that may generate broader consensus: Is the Court deciding what it has to and no more than it has to? In the table that follows, I apply this criterion to labor and employment cases argued and decided during the Court's 2006-07 Term. A grade of 1 is awarded whenever the Court decides the case on the issue presented by the petition and the facts and rules no more than is necessary to address that question; if the Court purports to decide a

broader issue, it receives a score of 0. On the other hand, when the Court hears a case and fails to address a fairly presented issue, it also receives a score of 0.

Two years of results are in: In the 2005-06 Term, the Court heard 9 cases involving labor and employment issues. The maximum score it could have received was 9; instead, it received a grade of 4, for an overall performance score of .44. In the 2006-07 Term, the Court heard 4 cases raising labor and employment issues and received the maximum score of 4, for an overall performance score of 1.0.

We will apply the same criteria in the next issue to evaluate the Court's work product during the recently concluded 2007-08 Term. Stay tuned. ●

ESTREICHER'S JUDICIAL PERFORMANCE INDEX 2006-07 SUPREME COURT LABOR & EMPLOYMENT DECISIONS				
Case	Issue	Judicial Restraint?	Non-Decision?	Net Score
<i>Norfolk v. Sorrell</i> , 127 S.Ct. 799 (2007)	Whether causation standard for employee contributory negligence under Federal Employers' Liability Act could be different from causation standard for carrier negligence?	Decided question presented.	No	1
<i>Ledbetter v. Goodyear</i> , 127 S.Ct. 2162 (2007)	Whether a plaintiff asserting a disparate pay claim under Title VII against an employer that periodically reviewed and re-established her pay under a facially neutral compensation system may challenge intentionally discriminatory pay decisions that occurred outside the statutory limitations period?	Decided question presented.	No	1
<i>Beck v. PACE Intl. Union</i> , 127 S.Ct. 2310 (2007)	Whether an employer that sponsors and administers a single-employer defined benefit plan has a fiduciary obligation under the Employee Retirement Income Security Act of 1974 to consider merger with the union's own multiemployer plan as a way to implement the employer's decision to terminate the plan?	Decided question presented.	No	1
<i>Long Island Care at Home v. Coke</i> , 127 S.Ct. 2339 (2007)	Whether U.S. Dept. of Labor regulation stating that statutory exemption for domestic service employees providing companionship services includes those employed by an employer or agency other than immediate family using their services is valid?	Decided question presented.	No	1

"SUPREME COURT SCORES: ESTREICHER'S JUDICIAL PERFORMANCE INDEX" BY SAMUEL ESTREICHER PUBLISHED IN LABOR AND EMPLOYMENT LAW, VOLUME 36, NO. 4, SUMMER 2008. COPYRIGHT © 2008 BY THE AMERICAN BAR ASSOCIATION. REPRINTED WITH PERMISSION.

Joint Program on Global Law Issues

John Colwell, Chief Counsel to National Labor Relations Board Member Wilma Liebman

GLOBAL LABOR ISSUES WERE THE TOPIC of a program held at National Labor Relations Board headquarters on April 4, 2008, and sponsored by New York University Law School. Board staff, as well as visitors from other federal agencies including the Department of Labor, heard lead presentations from Lance Compa of the Cornell School of Industrial and Labor Relations, the author of a new casebook on international labor law, and from R. Michael Gadbaw, a fellow at the Institute of International Economic Law at Georgetown Law School, recently retired as Vice President and Senior Counsel for the International Law and Policy Group of General Electric Company.

Professor Samuel Estreicher, director of NYU's Center for Labor and Employment and also the author of a new casebook on Global Issues in Labor Law, moderated the program. He also provided commentary on Professor Compa's presentation, which focused on the International Labor Organization (ILO), a standard-setting arm of the United Nations, and the NAFTA labor side agreement, which obligates the United States, Canada and Mexico to effectively enforce their own labor laws. Professor Cynthia Estlund of NYU commented on Mr. Gadbaw's presentation, which addressed corporate codes of conduct, particularly as they involve the overseas operations of American companies.

Among the issues discussed were the reasons for the historical reluctance of the United States to ratify ILO labor-standards conventions, the effectiveness of ILO standards in maintaining decent working conditions around the world, and the merits of corporate codes of conduct as a tool for improving labor standards, as an alternative to government enforcement.

The program was the second in the NYU-sponsored series, which began last year. ●

Restatement Third of Employment Law

MAY 12, 2008 – NYU SCHOOL OF LAW

hosted the Meeting of Advisors and Members for the Restatement Third of Employment Law. The purpose of the Restatement is to clarify and unify the area of employment law. State and federal statutes regulate the employment relationship; however, major aspects of this relationship continue to be governed by laws that were developed by state appellate courts. The doctrine has changed significantly over recent decades.

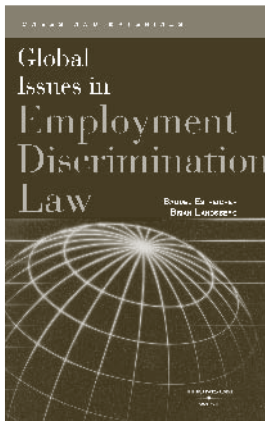
The Restatement project started in 2000, and during the October 2007 meeting of the Restatement Council, the Council unanimously approved the Second Draft of the Restatement, subject to changes the Reporters made in response to discussion at the meeting and to editorial and other minor improvements. In the May 12 Meeting of the Council, a tentative draft was submitted to the membership but no vote was taken on the draft.

The draft contains several sections on the existence of an employment relationship, contractual law dealing with termination of an employment relationship and the tort of retaliation in violation of public policy. To date, four preliminary drafts have been produced, as well as two Council drafts, one discussion draft, an interim draft and one tentative draft.

Several Members of the Labor Center's Advisory Board are also advisors to the Restatement Council, among them Michael Delikat (Orrick, Herrington & Sutcliffe), Prof. Cynthia Estlund (NYU School of Law), Laurence Gold (Bredhoff & Kaiser, PLLC), Willis Goldsmith (Jones Day), Jonathan Hiatt (AFL-CIO), Wayne Outten (Outten & Golden), and Kenneth Thompson (Thompson Wigdor & Gilly). Joseph Garrison (Garrison, Levin-Epstein, Chimes, Richardson & Fitzgerald) is a liaison to the Council. The Consultative Group also includes several members of the Board, namely: Anton Hajjar (O'Donnell, Schwartz & Anderson, P.C.) and Research Fellow & Professor Joan Flynn (Cleveland State University). Professor Samuel Estreicher, the Center's Director, is the Restatement's Chief Reporter, while Research Fellows Professors Matthew Bodie (St. Louis University) and Andrew Morriss (University of Illinois) are Reporters for the Restatement Third of Employment Law. ●

CENTER PUBLICATIONS

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***Global Issues in Employment Discrimination Law*, by Samuel Estreicher & Brian Landsberg. Thomson-West, 2007. 175 pages.**

Global Issues in Employment Discrimination Law

Two of the biggest trends in labor and employment law over the past couple of decades have been the growth in employment discrimination claims and the increasing globalization of the labor market. Sam Estreicher and Brian Landsberg's new textbook, *Global Issues in Employment Discrimination Law* (Thomson-West), synthesizes these two trends in an invaluable contribution to employment discrimination law.

The authors take a more expansive approach than is found in most comparative law textbooks. In addition to a survey of different approaches, they focus on what a U.S. lawyer needs to know when dealing with international employment discrimination issues. These issues are organized into four primary areas: 1) which employers are covered by anti-discrimination rules, 2) which classes of employees are protected by such rules, 3) how to define unlawful discrimination, and 4) available remedies and types of enforcement.

The chapter discussing covered employers discusses several important ways in which a business may fall under an anti-discrimination scheme's ambit. These include U.S. employers operating in foreign countries, foreign employers that may be required to comply with U.S. laws pursuant to a treaty, and the European approach to extraterritorial reach of anti-discrimination laws. This wide range of examples is indicative of the book's broad scope.

Next, the book looks to the type of classes protected under various antidiscrimination regimes. For example, the chapter includes material on European rules governing sex, disability, and age discrimination, as well as some of the approaches taken in Japan and China. It also examines several countries often ignored by other comparative texts, such as South Africa and Mexico.

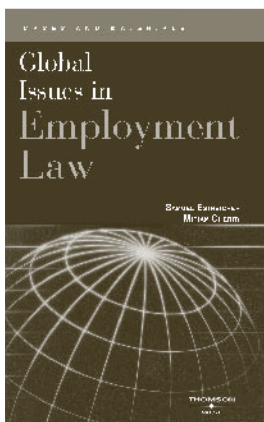
The chapter on defining unlawful discrimination discusses several different substantive issues. These issues are familiar to any U.S. attorney who practices in the employment discrimination field and include racial discrimination based on assumed differences in workers, how to determine discriminatory intent, discriminatory effect or impact, comparable worth, and affirmative action.

Finally, the book looks to remedies and enforcement. Such measures are important in how an anti-discrimination regime functions, and the approaches taken throughout the world are quite diverse. Thus, the chapter examines different means of

providing remediation to victims of employment discrimination, as well as the various mechanisms used for seeking enforcement of anti-discrimination rules.

The strength of the book—like others in the Global Issues labor and employment series—is its use of primary and secondary material and its challenging and thought-provoking notes. The rise in globalization makes international legal issues impossible to ignore; thus, even traditional employment discrimination courses would be wise to incorporate the issues discussed in the book. The book would provide an excellent base for a number of different discrimination seminars. In short, *Global Issues in Employment Discrimination Law* is a great introduction to an often-ignored, but increasingly important, aspect of U.S. employment discrimination practice.

— **JEFFREY M. HIRSCH**, CENTER RESEARCH FELLOW &
UNIVERSITY OF TENNESSEE COLLEGE OF LAW



***Global Issues in Employment Law* by Samuel Estreicher & Miriam Cherry. Thomson-West, 2008. 229 pages.**

Global Issues in Employment Law

As the U.S. economy increasingly crosses international borders, global issues have become an emergent part of U.S. employment law practice. Thus, Sam Estreicher’s and Miriam Cherry’s new textbook, *Global Issues in Employment Law* (Thomson-West), is a welcomed and much-needed contribution to the study of employment law.

The authors take a broad approach to the material covered in the book. The book’s focus is to shed light on international employment issues that an American lawyer may face, while also providing a comparative view of other systems that helps to prompt introspection about the efficacy of the American approach. The authors provide a nice mix of original sources, such as case decisions and court filings, and thought-provoking secondary material. The book’s coverage is also impressively expansive, especially given its refreshingly small size. These issues are organized into two primary areas: “Themes in Transnational Employment Law” and “Comparative Employment Law.”

The Transnational Employment Law section looks first to globalization and the problems that it can cause with regard to international trade and immigration. The section then examines international labor standards. This portion examines both multinational approaches to globalization, primarily through the International Labor Organization, as well as private codes that guarantee certain workplace standards. The notes and questions provide interesting questions about whether these measures are effective.

The Comparative Employment Law section encompasses the majority of the book. The chapters in this section cover a wide range of issues that are the mainstays of employment law practice.

The chapter on the start and end of the employment relationship includes materials on notice requirements as well as different approaches to defining employees and treating nontraditional employment relationships, such as part-time and temporary work. It also provides a useful view of major termination laws around the world. Moreover, different approaches to trade secrets and non-competition agreements—increasingly important in the global labor market—are discussed in the following chapter.

The book then moves to anti-discrimination and anti-harassment laws, focusing in particular on race and sex discrimination. Next is an examination of employee privacy and whistleblowing. These areas have been growing in importance for the employment attorney and this chapter provides not only cases, but also scholarly work that helps illuminate the ways in which the law may develop.

Hours and compensation issues are the topics for the following chapter. These issues aptly show many of the similarities in various countries' methods for regulating hours worked and compensation levels, while also illustrating some important differences. For example, the authors provide material on gender pay inequality and the importance of minimum wage standards in India—topics often ignored in other discussions of hour and compensation law.

Finally, the book looks at employee benefit law and issues surrounding executive contracts. As labor markets have become globalized, rules governing pensions, family leave, and executive contracts make up a larger portion of attorneys' work and the book's international perspective is illuminating.

The book's use of both primary and secondary material not only exposes students to current laws, but also provides them with the foundation to discuss and formulate the public policy issues implicated by the covered topics. The notes assist in such discussions, as they highlight open questions and raise challenging hypotheticals. The book would be perfect either for a seminar or as additional material in a traditional employment law course. Its global perspective sheds light on an increasingly important area of practice, as well as providing students with a means to gain a broader perspective on how the U.S. has regulated these areas. *Global Issues in Employment Law* is an important and much-needed addition to the employment law academic literature.

—**JEFFREY M. HIRSCH**, CENTER RESEARCH FELLOW &
UNIVERSITY OF TENNESSEE SCHOOL OF LAW

PLEASE JOIN US

Labor Law under the New Administration

A Panel Discussion featuring:

Rosemary Alito (K&L Gates LLP)

Jonathan P. Hiatt (General Counsel, AFL-CIO)

Peter Hurtgen (Senior Counsel, Morgan, Lewis & Bockius LLP;
formerly member and chair, NLRB)

Thomas A. Kochan (Professor of Management, MIT)

Andrew M. Kramer (Partner, Jones Day)

Wilma B. Liebman (Member, NLRB)

Moderated by Professor Samuel Estreicher

Friday, November 21, 2008, 10:00 A.M.—12:15 P.M.

Greenberg Lounge, Vanderbilt Hall, NYU School of Law

RSVP by November 17, 2008: labor.center@nyu.edu

MAGDALENA G. JACOBSEN (1940–2008)

The labor-management community lost one of its shining lights with the recent passing of Magdalena Jacobsen. When you think of Maggie, your first thoughts are of a fun-loving, feisty individual, who never took herself too seriously. While all of that is accurate, it tends to mask the mind-boggling depth and diversity of her experience.

Her unique combination of charm and persistence was first honed as a flight attendant for Continental Airlines and then as a local and national leader for the Steward and Stewardess Division of the Air Line Pilots Association (precursor to the Association of Flight Attendants). It was in her Union positions that I first encountered Maggie—as funny, charming and, yes, at times exasperating a client as I’ve ever experienced.

Maggie then became Manager of Labor Relations for Continental, with responsibility for both pilots and flight attendants. Even though she had gone over to the “dark side,” it was difficult to hold that against her for long. Maggie then turned to the public sector, serving as a Commissioner for the Federal Mediation and Conciliation Service for some 14 years, with an intervening stint as Director of Employee Relations for the City and County of San Francisco, responsible for contracts with 45 unionized employee groups and providing labor advice to the Mayor.

Maggie next brought her boundless energies and skills to the National Mediation Board (NMB), appointed by the President and confirmed by the Senate for three 3-year terms, including as NMB Chair. In this capacity, I experienced, first-hand, Maggie’s unique mediatory skills in protracted negotiations, first between Northwest Airlines and its ALPA-represented pilots, and then between American Airlines and its AFA-represented flight attendants. Not surprisingly, Maggie did not take a hands-off approach; she fully engaged, utilizing her humor and persistence (and many flip-charts!) to “encourage” an agreement.

Shortly before Maggie’s death, she provided expert assistance for one of our clients. Even though by then racked with illness, she was the same “old” Maggie, mixing heavy doses of humor with sage advice. I have to admit that even when I received the terrible, but for me not unexpected news of Maggie’s death, I had to smile, because the mere mention of Maggie brought back memories of so many wonderful encounters. I think I can safely speak for all of us who knew her when I say, “we miss you Maggie,” and we know you’re making others laugh and not take themselves too seriously wherever you are.

— STEPHEN B. MOLDOF, COHEN, WEISS & SIMON

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Welcome NEW MEMBERS

A plaintiff-side lawyer with Beldock, Levine & Hoffman with over 30 years of experience, **ROBERT HERBST** has spoken at several of the Center's programs. He has an active trial and appellate practice in both the state and federal courts, as well as in arbitration and mediation proceedings. His fields include employment discrimination, civil rights, police and other governmental misconduct, criminal defense, commercial litigation, class actions, malpractice and personal injury.

A frequent presenter on labor law topics for the NYU Workshop on Employment Law for Federal Judges and several other programs, noted union attorney **ANTON HAJJAR** is a principal with O'Donnell, Schwartz & Anderson, P.C. He has represented several unions and is an advisor and pro bono attorney for Arab-Americans, particularly commercial airline pilots, in employment discrimination cases arising after September 11, 2001.

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COMMUNITY NEWS

HON. STUART ISHIMARU (EEOC) was renominated for a second term as Commissioner of the Equal Employment Opportunity Commission by President George W. Bush and confirmed for a second term that will expire in 2012.

PROF. SUSAN STABLE (St. Thomas University School of Law) recently published three articles “Workers in the Vineyard: Catholic Social Thought and the Workplace”, 5 *Villanova Journal of Catholic Social Thought* 371 (2008), “Can Secular Feminists and Catholic Feminists Work Together to Ease the Conflict between Work and Family,” 4 *University of St. Thomas Law Journal* 432 (2007) (Symposium Issue), and “Google Benefits of Google’s Benefit,” 3 *University of Maryland Journal of Business and Technology Law* 97 (2008) (Symposium Issue).

This fall, **PROF. DANIEL O’GORMAN** will be starting as an Assistant Professor at Barry University School of Law, teaching Contracts, Labor Law, Employment Law, and Employment Discrimination.

PROF. PAUL M. SECUNDA joined Marquette University School of Law in Milwaukee, July 2008.

We are pleased to announce that **DONNA MALIN** (Johnson & Johnson) has been appointed to the position of Vice President - Law, Worldwide Vision Care Franchise of Johnson & Johnson. In this role, Donna will serve as a member of the Vision Care Global Operating Committee and the Vistakon (U.S.) management board. We congratulate Donna on her appointment.

PROF. SETH D. HARRIS chairs the Obama-Biden campaign’s Labor, Employment, and Workplace Policy Committee and co-chairs its Disability Policy Committee.

REGINALD E. JONES retired from his position at DLA Piper US and now practices on his own.

After retiring from his position at Ford & Harrison in December 2006, **JOHN-EDWARD ALLEY** and his son, John-Edward Alley, Jr., took the summer off to go on the “Great Circle Trip” with their boat, the *Alley Oops!!!*

The Lawyers Alliance for New York honored **ROBERT S. WHITMAN** (Seyfarth Shaw) with the 2008 Award for Pro Bono Leadership for his exemplary pro bono service for nonprofit organizations in New York City.

CENTER NEWS

Succeeding Ben Eisenman at the Center for Labor and Employment Law is **TORREY WHITMAN**. Torrey, who assumes the new post of Executive Director of the Labor Center, is also Executive Director of the Dwight D. Opperman Institute of Judicial Administration. A graduate of Stanford University, where he majored in Chinese, and Columbia Law School, Torrey clerked for Judge Harold R. Medina of the U.S. Court of Appeals for the Second Circuit and later was a partner of Shearman & Sterling. While at Shearman & Sterling,

he opened and managed the firm’s offices in Tokyo and Taipei. He left private practice to become president of China Institute in America, an educational and cultural nonprofit organization in New York, and subsequently became executive director of the Weatherhead East Asian Institute at Columbia University. He ran the Opperman Institute of Judicial Administration’s 2007 Summer Training Program at NYU for Judges from the People’s Republic of China, before joining the Institute as Executive Director in January 2008.

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to our Board Members named among The Best Defense by *Human Resources Executive*

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to our Board Member named on *Human Resources Executive's* Top 10 List of Plaintiffs' Attorneys to Fear the Most

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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 Torrey Whitman at (212) 992-8103 or torrey.whitman@nyu.edu, or directly to our Editor, Nora Strecker at (212) 992-8820 or nora.strecker@nyu.edu.

Newly Elected Fellows

of the College of Labor and Employment Lawyers, Class of 2008

SPECIAL CONGRATULATIONS go to **Hon. Wayne R. Gold** (NLRB), **Hon. Stuart J. Ishimaru** (EEOC), **Reginald E. Jones**, **Jeffrey S. Klein** (Weil, Gotshal & Manges) and **Mark D. Risk** (Mark Risk, P.C.) who are also Members of the Advisory Board of the Center for Labor and Employment Law, as well as **Dennis A. Lalli** (Of Counsel, Bond, Schoeneck & King), a frequent speaker at the Center's programs.

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- 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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