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Teaching Employment and Labor Law Symposium

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**FOREWORD:
TEACHING EMPLOYMENT AND LABOR LAW SYMPOSIUM**

SUSAN A. FITZGIBBON*

As Co-Director of the Wefel Center for Employment Law at Saint Louis University School of Law, I welcome you to this extraordinary issue of the *Saint Louis University Law Journal*. The Wefel Center for Employment Law, founded in 1987, has the distinction of being one of the very first law school centers dedicated to the study of Employment Law. In 2012, we celebrated the Center's twenty-fifth anniversary, and we are delighted to sponsor this Symposium on Teaching Employment and Labor Law as a continuation of that celebration.

The Symposium is co-sponsored by the *Saint Louis University Law Journal*. Every year, the *Law Journal* dedicates an issue to a symposium that is co-sponsored by one of the Law School's Centers of Excellence, and we are so happy to focus on Teaching Employment and Labor Law this year.

I am honored to introduce this most impressive group of legal scholars who have presented their ideas on how to educate law students to approach and analyze the issues and problems arising in the evolving field of workplace law. While these scholars address a variety of pedagogical issues and approaches to teaching employment and labor law, there are a number of unifying threads. One theme recognizes that employment and labor laws address issues of justice and dignity, as well as the need for a productive and efficient workplace. Another prominent thread addresses the current particular emphasis on educating law students to be "practice-ready" upon graduation and the methods to achieve that goal. The palpable enthusiasm these scholars bring to their teaching and share with their students is evident in all of these articles.

Professors Marion Crain and Pauline Kim make the case for *A Holistic Approach to Teaching Work Law*,¹ which rejects the usual tripartite division of the curriculum into: Labor Law, Employment Law, and Employment Discrimination. Presenting two examples—employer regulation of employee use of social media and employees' ability to use group power against

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1. Marion Crain & Pauline T. Kim, *A Holistic Approach to Teaching Work Law*, 58 ST. LOUIS U. L.J. 7 (2013).

employers, Crain and Kim demonstrate that lawyers need to approach workplace problems “holistically” to be aware of the variety of legal issues and laws implicated and to be able to address the problem completely.

In *A Proposal to Improve the Workplace Law Curriculum from a Corporate Compliance Perspective*,² Professor Nicole Porter presents a current overview of the courses offered in the workplace law curriculum in United States law schools. Porter then proposes a new course integrating Labor Law, Employment Law, Employment Discrimination Law, and non-litigation practical skills to prepare students to advise employers on how to comply with workplace laws. In such a course, students would not only gain insight into the interaction of different workplace laws, but would also learn basic corporate compliance skills, including how to counsel clients contemplating a termination action, how to conduct an investigation, and how to train supervisors.

Professor Joseph Slater makes the case for *Teaching Private-Sector Labor Law and Public-Sector Labor Law Together*.³ Slater notes that unlike other courses offered in the labor and employment curriculum, there is a closer and more logical fit between private-sector and public-sector labor laws. Because union density is decreasing in the private sector and increasing in the public sector, there will be more students practicing public-sector labor law, so it is important for students to be familiar with both types of labor law. As concrete support for the feasibility of this proposal, Slater has co-authored a new textbook that would facilitate the adoption of such a course.

In *Employment Law Inside Out: Using the Problem Method to Teach Workplace Law*, Professor Rachel Arnow-Richman recommends using the problem method to teach Employment Law.⁴ Arnow-Richman explains that she implemented the problem method by assigning a problem scenario with accompanying cases. She then has the students *present the problem* in class (as they ordinarily would present a case) and utilize the cases to analyze the problem. Arnow-Richman explains that this method of turning her “syllabus inside out”⁵ trained students to think like transactional lawyers and to consider the client’s interests as well as public policy in deciding how to advise the client.

Facing the fact that some aspects of the study of law are not riveting and others are not straightforward, Professor Marcia McCormick developed

2. Nicole Buonocore Porter, *A Proposal to Improve the Workplace Law Curriculum from a Corporate Compliance Perspective*, 58 ST. LOUIS U. L.J. 155 (2013).

3. Joseph E. Slater, *Teaching Private-Sector Labor Law and Public-Sector Labor Law Together*, 58 ST. LOUIS U. L.J. 209 (2013).

4. Rachel Arnow-Richman, *Employment Law Inside Out: Using the Problem Method to Teach Workplace Law*, 58 ST. LOUIS U. L.J. 29 (2013).

5. *Id.* 35–36.

technological innovations including some that force students to grapple with complex statutes and others that explain and reinforce the material covered. *From Podcasts to Treasure Hunts—Using Technology to Promote Student Engagement*⁶ describes McCormick's creation and use of podcasts containing short summaries of units of material, including key concepts and tests. Students can listen to these podcasts to expand their learning experience (and to satisfy their multi-tasking tendencies) while driving, exercising, etc. Online statutory treasure hunts motivate students to engage in a close reading of a statute and to apply the statute to resolve a specific problem, and provide the "prize" of immediate feedback. These treasure hunts can be used to reinforce basic concepts and to test the limits of statutory application. Finally, McCormick explains her use of a blog as an additional platform for student engagement.

One of the challenging aspects of teaching disability discrimination, Professor Elizabeth Pendo explains, is that it is often difficult for students to step into the shoes of a disabled person and see things from that perspective. Films provide students the opportunity, at some level, to experience and relate to an individual with a disability, as well as a vivid hypothetical for the application of discrimination law. In *Identifying (With) Disability: Using Film to Teach Employment Discrimination*,⁷ Pendo describes her use of the film *Philadelphia* and presents a number of class discussion questions designed to explore issues including defining disability, the employer's duty of non-discrimination, and limits on medical inquires and examinations.

In *Teaching Employment Discrimination Law, Virtually*,⁸ Professor Miriam Cherry suggests using virtual world technologies, such as Second Life, to give students the opportunity to change their identities and "virtually" walk in another's shoes. Cherry explains how students can experience employment discrimination, develop a broader perspective of it, and also develop cultural competency skills crucial to client representation, by adopting, for example, a stereotyped identity and working through problems or scenarios in an environment structured by the professor.

In *Teaching the Post-Sex Generation*,⁹ Professor Kerri Stone suggests ways to counteract the tendency among current students to dismiss the need for sex discrimination jurisprudence. Sexual stereotyping and gendered bullying are two of the examples Stone uses to demonstrate that Title VII is a relatively

6. Marcia L. McCormick, *From Podcasts to Treasure Hunts—Using Technology to Promote Student Engagement*, 58 ST. LOUIS U. L.J. 127 (2013).

7. Elizabeth Pendo, *Identifying (With) Disability: Using Film to Teach Employment Discrimination*, 58 ST. LOUIS U. L.J. 143 (2013).

8. Miriam A. Cherry, *Teaching Employment Discrimination Law, Virtually*, 58 ST. LOUIS U. L.J. 83 (2013).

9. Kerri Lynn Stone, *Teaching the Post-Sex Generation*, 58 ST. LOUIS U. L.J. 223 (2013).

recent law that is constantly evolving and open to multiple interpretations, even by federal judges addressing the same case. Stone also emphasizes that students need to understand both the employer and the employee perspective in these cases in order to represent any client effectively.

The Carnegie Report's critique of legal education, including the failure to provide students the opportunity to use legal thinking in actual law practice, and the Report's recommendations to address the problem prompted the Labor Law Group and the ABA Section of Labor and Employment Law to develop a capstone course in Labor and Employment Law. In *The Capstone Course in Labor and Employment Law: A Comprehensive Immersion Simulation Integrating Law, Lawyering Skills, and Professionalism*,¹⁰ Professor Laura Cooper describes the goals, development, and implementation of this complex and comprehensive course. Cooper's article also provides an assessment of how this experiment in legal education meets the goal of substantially enhancing law students' ability to practice law, including, for example, allowing students to learn from their mistakes without hurting real clients.

Professor Martin Malin's article provides a roadmap for *Constructing a Comprehensive Curriculum in Labor and Employment Law*.¹¹ It is based on the program at the Institute for Law and the Workplace at IIT Chicago-Kent College of Law. Malin describes and assesses a number of issues fundamental to this task including: the development of Chicago-Kent's Labor and Employment Law curriculum and certificate program; the importance of outreach to practitioners for advice and support; the use of financial aid to make more student externships possible; and the creative use of alumni to mentor and support students. From his long experience with this program, Malin offers a number of critical insights into current concerns in legal education.

Professor Matthew Bodie suggests a new approach to the development of labor and employment course materials using an "open-source" casebook. The open-source casebook would be the result of input and collaboration by a number of legal professors contributing pieces of information on a particular subject to a site, which would be available for other professors who could use some or all of the pieces in whatever order they might choose. In *Collaboration and Community: The Labor Law Group and the Future of Labor and Employment Casebooks*,¹² Bodie also reviews the history of the Labor

10. Laura J. Cooper, *The Capstone Course in Labor and Employment Law: A Comprehensive Immersion Simulation Integrating Law, Lawyering Skills, and Professionalism*, 58 ST. LOUIS U. L.J. 99 (2013).

11. Martin H. Malin, *Constructing a Comprehensive Curriculum in Labor and Employment Law*, 58 ST. LOUIS U. L.J. 111 (2013).

12. Matthew T. Bodie, *Collaboration and Community: The Labor Law Group and the Future of Labor and Employment Casebooks*, 58 ST. LOUIS U. L.J. 61 (2013).

Law Group and its unique collaboration of scholars and practitioners to produce casebooks and concludes that the Labor Law Group would be the “ideal catalyst for an open-source casebook.”¹³ And it is fitting in this Symposium on Teaching Employment and Labor Law that Bodie cites and quotes our colleague John Dunsford, the first Director of the Wefel Center for Employment Law and longtime member of the Labor Law Group, in describing the innovative and exciting collaborative process of the Labor Law Group.

In this time when legal education faces numerous challenges from the economy, technology, and changes in law practice, to name a few, this remarkable group of labor and employment law scholars offer a variety of ideas to consider and explore for the future.

13. *Id.* at 76.

