

2013

## Constructing a Comprehensive Curriculum in Labor and Employment Law

Martin H. Malin  
*Chicago-Kent College of Law*, [mmalin@kentlaw.iit.edu](mailto:mmalin@kentlaw.iit.edu)

Follow this and additional works at: <https://scholarship.law.slu.edu/lj>



Part of the [Law Commons](#)

---

### Recommended Citation

Martin H. Malin, *Constructing a Comprehensive Curriculum in Labor and Employment Law*, 58 St. Louis U. L.J. (2013).

Available at: <https://scholarship.law.slu.edu/lj/vol58/iss1/9>

This Article is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Law Journal by an authorized editor of Scholarship Commons. For more information, please contact [Susie Lee](#).

## CONSTRUCTING A COMPREHENSIVE CURRICULUM IN LABOR AND EMPLOYMENT LAW

MARTIN H. MALIN\*

### INTRODUCTION

The steady decrease in applications to law schools over the past three years has focused discussion on the cost of legal education, the availability of post-law school employment, and the adequacy with which law schools prepare their students for the practice of law.<sup>1</sup> Concerns over whether law schools do an adequate job of preparing students for practice are not new. They were raised by the MacCrate Report and, more recently, by the Carnegie Report.<sup>2</sup>

In this Essay, I offer for consideration, IIT Chicago-Kent College of Law's (Chicago-Kent) certificate program in labor and employment law as an example of one way to address current concerns with preparation of students for the practice of law, ameliorating the high costs of legal education, and improving students' job prospects. In Part I, I describe the antecedents to the program. In Part II, I discuss the development of the program and its accompanying Institute for Law and the Workplace and describe the elements of the program. In Part III, I discuss how the program deals with the concerns of preparation for practice, job opportunities, and costs that dominate the current discussion of the future of legal education.

### I. THE ANTECEDENTS OF THE CERTIFICATE PROGRAM IN LABOR AND EMPLOYMENT LAW

The current certificate program in labor and employment law can trace its beginnings to the mid-1970s. At that time, under the leadership of Professor Lawrence Doppelt, Chicago-Kent developed an LL.M. program in labor law. Additionally, during Professor Doppelt's tenure, Virginia Piper, the widow of Kenneth M. Piper, a senior labor relations executive with Bausch & Lomb and Motorola, agreed to fund an annual lecture in memory of her late husband. The

---

\* Professor and Director, Institute for Law and the Workplace, Chicago-Kent College of Law, Illinois Institute of Technology.

1. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* ix (2012); William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 461–62 (2013).

2. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 15, 93 (2007).

first Piper Lecture featured an address by John Fanning who was then the Chairman of the National Labor Relations Board, with commentary by union attorneys Gilbert Cornfield and Marvin Gittler, and management attorneys Richard Laner and Richard Ostrow.

Tragically, Professor Doppelt took ill and passed away in 1979 at the age of 44. Fittingly, the proceedings of the inaugural Piper Lecture were published in an issue of the *Chicago-Kent Law Review* dedicated to Professor Doppelt's memory. All of the articles in the issue were focused on the law governing the workplace.<sup>3</sup>

Professor Doppelt's death was a major blow to the LL.M. program. The program stopped admitting students. Administration of the program fell to a member of the faculty who lacked a background in the law governing the workplace, assisted by the very capable adjunct faculty who taught in the program. I joined the Chicago-Kent faculty in the fall of 1980 and was given responsibility to advise the very few remaining students on their theses, which would allow the program to wind down.

During the 1981–82 academic year, we investigated the possibility of reviving the LL.M. program but determined that there was insufficient demand to sustain the program over the long term. Our investigation revealed, however, that many J.D. students were attracted to Chicago-Kent by the extensive course offerings provided by the LL.M. program. The LL.M. program had an advisory board drawn from the leading management and union attorneys in Chicago. Their consensus view was that there was not a need for their new associates to gain a graduate degree focused on labor law, but they would look favorably on J.D. graduates who had significant coursework in the law of the workplace. Consequently, we decided to expand our course offerings at the J.D. level.

At the time, Chicago-Kent's J.D. course offerings were limited to a two-semester six-credit sequence called Labor Law I and Labor Law II which covered the National Labor Relations Act (NLRA), the process of collective bargaining and contract administration, labor law in the public sector, employment discrimination, and labor standards (mostly wage-hour law). In response to suggestions by the practitioners who had served on the LL.M. program advisory board, Employment Discrimination was spun off into a separate three-credit course and Collective Bargaining and Arbitration was spun off into a two-credit seminar. Labor Law remained a six-credit two-semester sequence and covered the NLRA, labor standards, and the law governing internal union affairs.

The early 1980s saw two other significant developments. First, Mrs. Piper funded the second Piper Lecture, which featured then Secretary of Labor, Ray

---

3. *Lawrence F. Doppelt—In Memoriam*, 56 CHI.-KENT L. REV. 434 (1980).

Marshall.<sup>4</sup> She was pleased by the success of the two Piper Lectures and decided to ensure that the lecture series would continue in perpetuity with a generous gift that created the Kenneth M. Piper Endowment. The first program under the endowment featured then UAW President, Douglas Fraser, discussing his experience as the union's representative on Chrysler's board of directors.<sup>5</sup> With the creation of the endowment, we created an endowment advisory board consisting of some of the leading practitioners in the area, which allowed many practitioners who had been involved in the LL.M. program to remain involved in the law school.

Second, an evening division student named Frank Fucile, who was an inspector with the Food and Drug Administration and the president of his local of the American Federation of Government Employees, observed that there were no continuing education opportunities available for labor relations professionals in the federal sector outside of Washington, D.C. Recognizing that Chicago was a major regional center of the federal government, he urged the law school to put such a program together. In exchange for independent research credit, Mr. Fucile took charge of the effort. He brought together a program advisory board consisting of the local leaders of the major federal employee unions and regional leaders of the federal agencies, as well as the regional directors of the Federal Labor Relations Authority and the Merit Systems Protection Board. Thus was born the law school's annual conference on Federal Sector Labor Relations and Labor Law. On September 19, 2013, the law school held its thirty-first annual federal sector conference. The conference has been held every year since its inauguration, except for 2001 when it was cancelled because of the terrorist attacks. The "Kent Conference" is well-known in the federal and postal sectors nationally.<sup>6</sup> It annually attracts more than 200 lawyers and other labor relations professionals from throughout the Midwest.

The next significant development was the enactment, in 1983, of Illinois' comprehensive public employee collective bargaining statutes. The Illinois Educational Labor Relations Act, which governs organizing and bargaining in public education, took effect on January 1, 1984,<sup>7</sup> and the Illinois Public Labor Relations Act,<sup>8</sup> which governs the rest of the public sector, took effect on July 1, 1984. I was privileged to serve as a consultant to the public sector labor

---

4. Hon. Ray Marshall, *The Future of the American Labor Movement: The Role of Federal Law*, 57 CHI.-KENT L. REV. 521 (1981).

5. Douglas A. Fraser, *Worker Participation in Corporate Government: The U.A.W.-Chrysler Experience*, 58 CHI.-KENT L. REV. 949 (1982).

6. See, e.g., Michael Bologna, *MSPB Takes on Review of Regulations Pertaining to Adjudicatory Processes*, GOVERNMENT EMPLOYEE RELATIONS REPORT, Sept. 27, 2011, at 1.

7. 115 ILL. COMP. STAT. §§ 5/1, 5/10 (2010).

8. 5 ILL. COMP. STAT. §§ 315/1, 315/6, 315/7 (2010).

relations agencies for whom I drafted the regulations implementing the new statutes. Using the successful model of the Federal Sector Labor Relations and Labor Law conference, and with the cooperation of the labor relations boards, we inaugurated an annual conference on Illinois Public Sector Labor Relations Law. We reached out to all major constituencies of such a conference and invited their participation in its planning and development. The conference has been held annually since 1984, and the twenty-ninth such conference will take place on December 6, 2013. Each year, the conference attracts more than 500 lawyers and other labor relations professionals from throughout the State of Illinois and neighboring states.

As the law governing the workplace continued to evolve, we found it necessary to evolve our course offerings. In the mid-1980s, we developed a survey employment law course called Employment Relationships and a seminar on Public Sector Employment. We also consolidated Labor Law into a single semester, four-credit course. Meanwhile, we evolved the format of the annual Piper Lecture to feature one or more scholarly presentations coupled with practitioner commentary. The Piper Lecture gained considerable popularity among the Chicago labor and employment law community. It has always been held at lunch time which has enabled many practitioners to attend by taking somewhat longer than usual lunch breaks.

In 1988, Richard Gonzales joined Chicago-Kent's clinical faculty, bringing with him his employment discrimination and wrongful discharge practice. Professor Gonzales would later be joined by Clinical Professor Laurie Leader and, for a brief period, Clinical Professor Terence Norton. For the first time, Chicago-Kent students had the opportunity to get in-house, hands-on clinical experience representing individual employees.

With our expanded course offerings, a group of students were focusing part of their legal studies on the law governing the workplace. With the Piper Lecture and our annual conferences, the law school was becoming known as the center for labor and employment law in the Chicago community. With the hiring of Rafael Gely as an assistant professor in 1995, the stage was set for the development of a formal certificate program in the law governing the workplace and a more systematic outreach to the practicing professional community.

## II. DEVELOPMENT OF THE CERTIFICATE PROGRAM IN LABOR AND EMPLOYMENT LAW AND THE INSTITUTE FOR LAW AND THE WORKPLACE

### A. *Starting the Programs*

Prior to 1995, the Chicago-Kent faculty included Professor Howard Eglit, one of the country's leading authorities on age discrimination, who taught Employment Discrimination Law and three outstanding employment law clinicians, Professors Richard Gonzales, Laurie Leader and Terence Norton. At

times, we had visiting assistant professors, temporary positions designed as apprenticeships to law teaching, who, in addition to teaching Legal Writing, also taught a labor or employment law course.<sup>9</sup> However, I was the only member of the faculty with a core scholarship focus on the law of the workplace. In response to suggestions from the dean that we begin a formal program in labor and employment law, I was fond of saying, “Marty Malin does not a program make.”

Rafael Gely held a Ph.D from the University of Illinois’ Institute of Labor and Industrial Relations in addition to his law degree. He was establishing himself as a labor law and economics scholar while teaching in the business school at Texas A&M University. His addition to the Chicago-Kent faculty greatly enriched our scholarly resources in the law governing the workplace.<sup>10</sup>

In 1995, Chicago-Kent had two successful J.D. certificate programs: one in environmental and energy law and one in international and comparative law. The models provided by these programs presented a starting point for constructing a certificate program in the law governing the workplace. However, we realized that to design a truly successful program, we had to reach out to the practicing professional community. We also wanted to know whether we should develop our Piper Lecture and conferences into a broader center that would serve the labor and employment law community.

We were able to draw on our already substantial ties to the community. We had a large group of alumni practicing in the field and they were eager to help. Through the Piper Lecture and our conferences, we had developed ties to many leading practitioners and their organizations (law firms, companies, unions, and government agencies) and we found them eager to assist in the development of a program that all recognized could become a substantial asset to the community.

The message from the practicing professional community was that our existing courses of Labor Law, Employment Discrimination, and Employment Relationships provided students with the doctrinal core they would need to

---

9. These included Lorraine Schmall, who went on to an outstanding career as a workplace law scholar and professor at Northern Illinois University, from which she recently retired, *Professor Green Moderates Presentation on Human Rights*, N. ILL. U., [http://www.niu.edu/law/calendar/faculty\\_news/leona\\_green.shtml](http://www.niu.edu/law/calendar/faculty_news/leona_green.shtml) (last visited Sept. 15, 2013), and Michael Yelnosky, who continues to enjoy a robust career as a workplace law scholar and professor at Roger Williams University. *Michael J. Yelnosky*, ROGER WILLIAMS U., <http://law.rwu.edu/michael-j-yelnosky> (last visited Sept. 15, 2013). Subsequent to the program’s creation, it was enriched by Visiting Assistant Professor Marcia McCormick, who has established herself as a vigorous employment law scholar and a professor at Saint Louis University. *Marcia L. McCormick*, ST. LOUIS U., <http://www.slu.edu/colleges/law/slulaw/faculty/mmccor20> (last visited Sept. 15, 2013).

10. Our scholarly resources were enhanced further a year later when Professor Peggie Smith joined our faculty. *Peggie R. Smith*, WASH. U., [http://law.wustl.edu/faculty\\_profiles/documents/smithpeggie/CVCcurrent.pdf](http://law.wustl.edu/faculty_profiles/documents/smithpeggie/CVCcurrent.pdf) (last visited Sept. 15, 2013).

practice in the field, but they were not sufficient to prepare students for the practice. Practitioners consistently stressed a need for rigorous skills training, particularly in specialized research resources and in drafting, and a need for opportunities for students to gain practical experience. They mentioned workers compensation and employee benefits as specialties within the field of workplace law that need not be required of all students, but that should be available to those interested in them. They also urged the value of an intensive writing experience focused on the workplace.

With respect to service to the community, the practitioners we consulted praised our conferences and the Piper Lecture for giving them an opportunity to reflect on issues and to meet opposing counsel in an academic setting. They commented that it was common to settle grievances and unfair labor practice charges at our conferences because they, and opposing counsel, found the change of scenery and atmosphere conducive to settlement. However, they observed, our existing programming for the community was designed for the mass market. What was missing was the opportunity to gather and reflect on developing workplace issues in a more intimate setting.

To meet the need for a forum in which to focus on cutting edge issues at a sophisticated level in an intimate setting, we proposed to create the Institute for Law and the Workplace (ILW). We envisioned a group of leading law firms, corporations, and unions as members of ILW who would gather at the law school to focus on critical issues in a manner that would cut across union, management, and plaintiff lines. Member institutions would also provide funding for ILW, but the donations would be used to provide scholarships to students in the certificate program. Possibly because the mass-market conferences already were generating revenue for the law school, the administration agreed that all donations ILW raised could be used to fund scholarships, rather than ILW's operating expenses. Operating expenses would be covered by a separate budget supplied by the law school. Member institutions would be welcome to participate in ILW's other programs, such as its conferences and its externship program, described below, to the extent they were interested.

We relied heavily on community input in designing the Certificate Program in Labor and Employment Law. We recognized that in designing the certificate we should require students to take what the practitioners had identified as the three doctrinal core courses—Labor Law, Employment Discrimination, and Employment Relationships—but that was not sufficient. In considering how to provide the appropriate skills training, we focused on the law school's existing second year legal writing requirement which consisted of a two-credit course in legal drafting and a two-credit course in advanced research with both courses offered in various specialties. We decided to combine instruction in advanced research techniques and drafting into a single three-credit course focused on labor and employment law. Visiting Assistant

Professor Mary Rose Strubbe, who had been a successful plaintiffs employment lawyer before returning to her alma matter to teach Legal Writing, took the lead in developing the new combined course. Under Professor Strubbe's guidance and leadership, the experiment of combining advanced research and drafting was so successful that the Legal Writing Program later adopted it for the entire student body.

Our practitioner advisers stressed the importance of providing students with practical experience in labor and employment law. We had an outstanding in-house employment law clinic and the clinic's director agreed to reserve two slots per clinical faculty member per semester for students in the certificate program. This would give certificate students an outstanding clinical experience but it would be limited to representing individual employees.

To provide greater breadth to our clinical offerings, we envisioned an externship program with opportunities for students to gain experience with management, union and employee law firms, in-house with private and public employers, in-house with unions, and with government regulatory agencies. The program would be coordinated by a full-time faculty member who would oversee the externship placements to ensure the integrity of the experiences the students received and would teach a classroom component of the program.

In-house clinic and externship opportunities, however, can be of limited utility to evening division students who, because they are employed full-time, often lack the scheduling flexibility needed to serve an externship or in the clinic. To provide an option more likely to fit the schedules of evening students, we envisioned a course that would simulate an employment claim from initial client contact forward. The class would be divided into a plaintiff's team and a defense team. Recognizing that there would not be sufficient time in the semester to simulate the trial of the claim, we envisioned the course ending with the defense team submitting a motion for summary judgment and the plaintiff's team submitting a response.

Members of the community had flagged workers compensation and employee benefits as two specialties that were not necessary for all lawyers to have, but that would be areas we should make available to our students. Fortunately, Chicago-Kent already offered Workers Compensation, taught by Adjunct Professor Warren Eagle, one of the leading employee workers compensation lawyers in the state, and Employee Benefits, taught by Professor Jeffrey Sherman, whose scholarship focused on tax and estates and trusts. We decided to require students seeking the certificate to take one elective in addition to the core courses and practicum, and to offer these two courses as electives, recognizing that we might develop additional electives.

Like most law schools, Chicago-Kent requires all students to write a major research paper, either as an independent research project supervised by a faculty member or in a seminar. Recognizing community advice that students should have an intensive writing experience, we decided to require that



students in the certificate program take their seminar in the labor and employment law field. We had existing seminars on Collective Bargaining and Arbitration, and Public Sector Employment and recognized the need to develop others, particularly outside of traditional union-management relations.

One other consideration guided our development of the proposed certificate program. We observed that Chicago-Kent's existing programs in environmental and energy law and in international and comparative law were denominated certificates, not majors, and this nomenclature was deliberate. The programs were designed to add value to the J.D. degree. They were not intended to displace the need to attain a broad-based legal education. We followed their model in this regard.

Thus, the certificate program proposal that we developed included four elements. Four core courses would be required of all students in the program: Labor Law, Employment Discrimination, Employment Relationships, and Advanced Research and Drafting. In their senior years, students would apply what they learned in the classroom in a practicum. They would have three options: in-house clinic, a labor/employment externship or Employment Litigation class. Students would be required to select one elective from Employee Benefits, Workers Compensation, and others yet unknown to be developed and students would take their required seminar in the labor/employment area. Our proposal required only one significant personnel move. Professor Strubbe would become assistant director of ILW and would add to her Legal Writing teaching duties, development of the Advanced Research and Drafting course (which would be taught by adjuncts), development and oversight of the externship program, and development of the Employment Litigation course.

With formal proposals for ILW and the program developed, we returned to the community, seeking reactions and support. The response we received was very gratifying. Many of the law firms, corporations, and unions we had approached for advice agreed to join ILW and to provide financial support for scholarships. We developed three types of scholarships. ILW members who committed to annual donations of at least \$5000 could name a scholarship to be funded by their donations. Donations of lesser amounts from members were accumulated into a fund that would provide Law and the Workplace Scholarships to students in the program who did not receive named scholarships. The unions and union law firms expressed a desire that their donations assist students who were looking toward a career representing unions. One union, the Illinois Fraternal Order of Police Labor Council, committed to funding a scholarship named for the union that would be awarded to a student in the program who had ties to organized labor or law enforcement. The other unions and the union law firms pooled their donations to form the Organized Labor Scholarship Fund, which provided scholarships to students in the program with ties to the labor movement. Our alumni also

offered their support by donating to the scholarship funds and by agreeing to serve as mentors for current students. The law school faculty voted to approve the program and it became official.

*B. Growth and Growing Pains: The Evolution of ILW and the Program*

Our first ILW members conference was held on May 7, 1997. It was a full day event. The opening plenary featured Robert Pritzker, CEO of the Marmon Group and Professor Paula Voos, at the time the director of the Industrial Relations Research Institute at the University of Wisconsin and a member of the Dunlop Commission, discussing developments affecting the future workforce, such as the impact of technology, changing demographics, and declining union density. This was followed by a session on employee selection, retention training and promotion, and their implications for legal conflict which featured AON's David Jones, Professor Gonzales, and Susan Getzendanner from Skadden Arps. Following lunch, the afternoon focused on remote site working and other implications of developing technology, featuring IIT Sociology Professor Christine Nippert-Eng, University of Connecticut Law Professor Eileen Silverstein, and University of Illinois Law Professor Matthew Finkin. Management attorney S. Richard Pincus and National Treasury Employees Union National Counsel Michael McAuley discussed the emerging labor relations issues.

Our members reacted very positively, with some saying that it was the best conference they had ever attended. They appreciated the ability to interact with leaders in the field and with each other. But after lunch, we began to lose our members. Two things became apparent. We had packed too much into a single conference and our members could not disappear from their offices and clients for a full day.

We learned from the experience of our first members conference. Every conference since the inaugural has been a half-day event, concluding with a luncheon. Members are able to leave by 1:30 p.m. We also learned that to make the conferences as beneficial to our members as possible, we have to get their input concerning topic and format. We now hold an annual breakfast planning meeting with our members each spring to discuss ideas for the conference to be held the following fall. The conferences have been a major success. A wonderful synergy has developed among our members that cuts across management, union, and plaintiff lines as they convene in a "safe" academic setting to exchange perspectives and learn about cutting edge workplace issues at a sophisticated and intimate level.

The certificate program kicked off with approximately thirty students. Over the next few years, that number approximately doubled. Here too, we learned from our early experience.

When the community learned of our externship program, the demand for our externs soared. We were offering students who had been immersed in labor

and employment law to a greater extent than any other law students in the city. We found, however, that many day students were opting for Employment Litigation class to fulfill their practicum requirement. Although this course, which was team taught by Professor Strubbe with a management lawyer-adjunct faculty member,<sup>11</sup> was of very high quality, we had expected that most students would opt for the varied experiences offered by the externship. When we inquired, we learned that many students wanted to participate in the externship but felt financially constrained from doing so. They recognized that it would be difficult, if not impossible, to devote the time required by the externship and continue to work part-time during the semester. They felt they could not afford to leave their part-time jobs, even though many of those jobs were not in labor or employment law, to take on the externship. To remedy this, we devoted some of our scholarship donations to funding financial need-based scholarships for students participating in the externship. Our experience provides a lesson for law schools as they develop and expand externship offerings in response to the demand for increased practical experiences for law students. Externships will not be successful if they are not combined with financial support to replace students' incomes from part-time employment. Our students rate our externship program highly and their externships, which take place in the fall semester of their senior year, often lead to offers of part-time paid employment for the spring semester and in several cases have led to offers of full-time employment following graduation.

One area that proceeded as we had expected was the response from our alumni. Chicago-Kent graduates practicing in the field came forward to support the program by serving as mentors to current students and by donating to support scholarships. Throughout the history of the program, every student who has requested an alumni-mentor has been matched with a graduate practicing the type of labor or employment law in which the student is interested.

As the program has grown, so too has our scholarship funding. Donations from our members remain the core of the scholarship funding, but they have been supplemented by donations from alumni and friends. One early member of ILW, Stickler and Nelson, a small boutique that represented employers in health care, endowed its scholarship. Although the firm subsequently merged with a much larger firm, the scholarship will continue in perpetuity. Two members of the Chicago-Kent class of 1972 also established endowments. The Honorable Edward Masters, the retired Chief Judge of the Circuit Court of Will County, and his wife Lynn established the Masters Family Endowment, in recognition of the role the certificate program played in the education of their daughter Melissa who went on to practice representing management, and their

---

11. Initially, Professor Strubbe team-taught the course with Lawrence Cohen of Fox & Grove; subsequently, she team-taught it with Lawrence Casazza of Vedder Price.

son Karl who went on to practice representing unions. We decided to devote the income from the endowment to the externship scholarships. Burton Odelson, partner in Odelson and Sterk, a firm that primarily represents local governments and school districts, endowed the Odelson Fellowships which support students in the externship program who are first generation law students. Many alumni want to help but are not in the position to create endowments. We have begun an initiative asking alumni to adopt current students. A graduate who adopts a student serves as a mentor to the student and funds a scholarship for the student. Currently two alumni have adopted students and discussions are underway with several others.

We have been fortunate to attract enriching co-curricular opportunities for our students. Shortly after Illinois' public sector labor relations statutes took effect, the University of Illinois' Institute for Labor and Industrial Relations began publishing a quarterly, *The Illinois Public Employee Relations Report* (*The Report*). Unfortunately, working on this publication did not appeal to the university's graduate students and the publication ran considerably behind schedule and was costing the university a good deal of money. The University of Illinois approached us to join in co-publishing *The Report*. Our investigation revealed that this could provide an excellent opportunity for our students and we believed that with the support of our students we could reorganize the publication, publish it timely, and reverse the financial losses. We were successful on all counts except the finances. We were able to reduce the deficit significantly but were never able to bring it into the black. Two years ago, we converted it into an electronic publication which solved the financial drain and provided improved service to our subscribers. Each year, four certificate program students serve as student editors, an enriching experience that has proven to be a valuable resume credential.

Around the time of the program's founding, the National Employment Lawyers Association (NELA) gave birth to a tax-exempt, not-for-profit organization known as the National Employee Rights Institute (NERI).<sup>12</sup> NERI, now known as Workplace Fairness, invited members of the academic community to discuss the start-up of an employee rights law review. We expressed interest but suggested that a law review slanted to the plaintiff's bar would lack credibility. We proposed a faculty-edited, peer-reviewed journal whose focus would be the well-being of employees in the workplace. NERI agreed that such a publication fit with its mission, which focused on employee welfare rather than the needs of the plaintiff's bar, which were met by NELA. *Employee Rights & Employment Policy Journal* (the *Journal*) publishes two issues per year. Editorial decisions are made by the *Journal's* editorial board of leading scholars in labor and employment law and related disciplines.

---

12. *Mission and History*, WORKPLACE FAIRNESS, <http://www.workplacefairness.org/about/wf> (last visited Aug. 26, 2013).

Certificate students serve on the *Journal's* student editorial board, where they perform the technical editing, including Bluebooking and cite checking the articles. The *Journal* provides our students with an enriching experience and a strong resume credential.

The *Journal* itself has evolved. We found it very difficult to run a peer-reviewed journal in a world dominated by student-run law reviews. We simply are unable to review article submissions as quickly as the student-run law reviews. Consequently, although we have continued to receive, accept, and publish unsolicited articles, the core of the *Journal's* issues has been special symposia organized by editorial board members and others. Among the more notable contributions have been papers from a conference on due process in employment arbitration sponsored by the National Academy of Arbitrators,<sup>13</sup> and papers from two conferences critiquing the ongoing Restatement of Employment Law project of the American Law Institute.<sup>14</sup> The *Journal* also regularly publishes papers from annual meetings of relevant sections of the Association of American Law Schools.<sup>15</sup>

Our visibility in the community has led to partnerships with groups as diverse as the American Corporate Counsel Association, with whom we presented a program on labor and employment aspects of corporate reorganizations, and the Chicago Federation of Labor, with whom we developed a Distinguished Labor Leader Lecture series which has featured, among others, AFL-CIO President Richard Trumka. We have partnered with the Federal Mediation and Conciliation Service to cosponsor a biannual conference for Midwest labor arbitrators and with the National Labor Relations Board to present periodic conferences on Hot Topics in Contemporary Labor Relations Law.

Maintaining elective courses and seminars has been somewhat challenging. Warren Eagle retired but passed the baton teaching workers compensation to his partner, and Chicago-Kent graduate, Martha Garcia, which has continued the stability in that course. Professor Sherman retired, leaving the Employee Benefits class staffed by a series of adjunct faculty, all of whom have approached the course from a tax perspective. Professor Cesar Rosado Marzan

---

13. *Papers from the National Academy of Arbitrators Conference, "Beyond the Protocol: The Future of Due Process in Workplace Dispute Resolution,"* 11 EMP. RTS. & EMP. POL'Y J. 255 (2007).

14. Lea VanderVelde, *The Proposed Restatement of Employment Law at Midpoint*, 16 EMP. RTS. & EMP. POL'Y J. 359, 362–77 (2012); *see generally* Kenneth G. Dau-Schmidt, *A Conference on the American Law Institute's Proposed Restatement of Employment Law*, 13 EMP. RTS. & EMP. POL'Y J. 1 (2009).

15. *See, e.g.,* Scott A. Moss et al., *Reviving Employee Rights? Recent and Upcoming Employment Discrimination Legislation: Proceedings of the 2010 Annual Meeting of the Association of American Law Schools Section on Employment Discrimination Law*, 14 EMP. RTS. & EMP. POL'Y J. 355 (2010).

offers International and Comparative Employment Law and Clinical Professor Edward Krauss offers Disability Law. Students may take these classes as courses or seminars. A seminar titled Privacy Rights in Employment and a course titled ADR and the Workplace have gone untaught in recent years due to lack of faculty resources. A bright spot has been the addition of an elective course titled Labor and Employment Considerations Impacting the Start Up and Evolution of a Privately Owned Company, which focuses on counseling a small business on labor and employment law concerns at various stages of the life cycle of the firm.

### *C. The Future*

Two primary tasks in the continued development of the program are to continue the evolution of the curriculum and to continue the institutionalization of the program. Recently, program faculty met with a cross-section of program graduates for feedback on the curriculum. The recommendations from our graduates included more experiential opportunities for our students and development of an employee benefits course that is labor and employment rather than tax focused. Experiential opportunities may include development of additional courses akin to the Labor and Employment Considerations course and revival of the ADR course with a focus on simulation learning. These suggestions were reiterated at a meeting with ILW members to get their feedback as employers of our graduates is scheduled and at a meeting of the faculty who teach in the program to process and act on the feedback.

Institutionalizing the program means making it so that it is not dependent on specific individuals. We have begun doing this. Professors Rafael Gely and Peggie Smith moved on to other law schools. We have been fortunate to have been joined by Professor Carolyn Shapiro who clerked for Justice Breyer and practiced employee-side employment law before joining our faculty, and Professor Rosado Marzan who practiced union-side labor law. Professor Rosado Marzan's work focuses on Europe and Latin America and brings a global perspective that the program sorely needed.

Approximately ten years ago, Professor Strubbe became director of Chicago-Kent's Legal Writing Program. For a while, she tried to maintain her responsibilities in the labor program but the burden proved too great. We were fortunate to attract Francine Soliunas, who had retired from a thirty-year career as in-house labor and employment counsel with Ameritech and its predecessor Illinois Bell, who became executive director of ILW. Ms. Soliunas also had a passion for working with students, especially students from diverse racial and ethnic backgrounds. Her position evolved into Assistant Dean for Student Development and Executive Director of the Institute for Law and the Workplace. She took over the running of the externship program, became a trusted adviser to countless students, and took over the mentorship program and the annual members conference. At the end of 2011, Dean Soliunas left

Chicago-Kent and we were fortunate to attract Marsha Ross-Jackson, who had a distinguished career as a management employment lawyer and a labor and employment relations executive, most recently as System Director of Human Resources for the Cook County Health and Hospital Systems. Dean Ross-Jackson has not only assumed the duties previously performed by Dean Soliunas but has taken over the Labor and Employment Law Considerations class, bringing stability to that important elective.

The program's ability to flourish even as it undergoes changes in personnel indicates that it has achieved a level of institutionalization. However, many in the community still refer to it as "Marty's program." I do not regard it as my program but rather as my legacy. That legacy will not be secure until the community comes to regard this as Chicago-Kent's program. At that point, it will be fully institutionalized within the law school.

#### CONCLUSION: THE PROGRAM AND THE FUTURE OF LEGAL EDUCATION

As discussed earlier, legal education is confronting concerns with the level of preparation for practice that we give our students, the high costs and heavy debt loads that our students undertake, and the distressing unemployment and underemployment of many graduates. I offer our program as one model for addressing these concerns.

There is a renewed focus in legal education on preparing students for the practice of law. The Chicago-Kent certificate program offers some valuable lessons for improving student preparation for practice. First, involve the community in designing the program. We found the suggestions from our practitioner advisers indispensable in developing a quality program. Second, do not simply add clinics, externships, and simulations but structure them for maximum pedagogical benefits. Students complete their practicum in the certificate program after they have had substantial doctrinal and skills-training classes. Feedback from students and externship sponsors confirms the value of this approach. Meanwhile, additional practice focused electives are on the drawing board. Third, recognize that many students need financial support to be able to take advantage of practice-oriented experiences such as clinics and externships. Forcing students into these courses without replacing lost part-time employment income will only exacerbate debt loads which are already stretched to the breaking point.

The certificate program has proved to be an asset for students in the job market. Because leaders of the bar were involved in designing the program, the certificate began with a measure of credibility in the job market. Certificate program students were able to draw on an existing strong network of Chicago-Kent alumni in the field, and the program's numerous conferences and lectures give students multiple opportunities to network with practitioners. A growing body of employers looks to certificate program students first when soliciting job applicants. The program is midway through its second decade and

graduates from the early years are now partners in law firms that represent management, unions, and employees, and hold responsible positions in corporations, unions, and government agencies. Several have held highly visible leadership positions, including a board member of the Illinois Labor Relations Board, the Secretary-Treasurer of the Chicago Federation of Labor, the General Counsel of Teamsters Local 727, the Corporate Director of Labor Relations for Harley Davidson, and the Vice President for Global Employee and Labor Relations for American Express. Remembering the assistance they received as students, these graduates have been willing to assist current students to the extent they are able.

All discussions of the future of legal education include concern over the high cost and resulting high levels of student debt. ILW has made a modest contribution to the cause of reducing student debt. For the 1996–97 academic year, ILW awarded approximately \$40,000 to eleven students. The amount of scholarship assistance awarded increased every year until it peaked just shy of \$200,000 in the 2007–08 academic year. When the economy crashed, endowment values crashed, donations dropped and so did the amount of ILW scholarship awards. However, it has remained above \$125,000 every year since and has turned around and is heading back up. ILW fundraising is focused exclusively on providing scholarship support to students in the program. If law schools are going to make a significant dent in student debt they will have to similarly focus their fundraising activities.

I offer the certificate program as an example of what is possible when law school faculty reach out to graduates and other leaders of the bar. I offer it as a truly comprehensive approach to educating the next generation of labor and employment lawyers.



