

1-1-2011

Note from the Founders

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Recommended Citation

1 Am. U. Labor & Emp. L.F. 1 (2011).

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NOTE FROM THE FOUNDERS

“We can have democracy in this country or we can have great wealth concentrated in the hands of a few, but we can't have both.”

*Justice Louis Brandeis*¹

“At the turn of the century women earned approximately ten cents an hour, and men were fortunate to receive twenty cents an hour. The average work week was sixty to seventy hours. During the thirties, wages were a secondary issue; to have a job at all was the difference between the agony of starvation and a flicker of life. The nation, now so vigorous, reeled and tottered almost to total collapse. The labor movement was the principal force that transformed misery and despair into hope and progress. Out of its bold struggles, economic and social reform gave birth to unemployment insurance, old age pensions, government relief for the destitute, and above all new wage levels that meant not mere survival, but a tolerable life. The captains of industry did not lead this transformation; they resisted it until they were overcome. When in the thirties the wave of union organization crested over our nation, it carried to secure shores not only itself but the whole society.”

*Dr. Martin Luther King, Jr.*²

Labor and employment law is an area of law that impacts every single individual in this country, if not all around the world. It addresses some of the most important and fundamental issues of law—as exemplified by its coverage in most, if not all of foundational law school courses. Labor and employment law remains the second-most litigated topic in the Federal Courts.

Washington, D.C. is the home of the United States Supreme Court, the United States Court of Appeals for both the D.C. and Federal Circuits, the Department of Labor, the National Labor Relations Board, the Equal

1. JOSEPH R. CONLIN, THE MORROW BOOK OF QUOTATIONS IN AMERICAN HISTORY 48 (1984).

2. Doctor Martin Luther King, Jr., Address at the Illinois AFL-CIO Convention (Oct. 1965).

Employment Opportunity Commission, the Merit Systems Protection Board, numerous governmental and non-governmental organizations, most—if not all—of the unions in this country, and the Chamber of Commerce.

Yet, as of April, 2010, there were only five student-run legal publications that specifically focused on labor and employment law nationwide and none in Washington, D.C.

The Washington College of Law (“WCL”) was founded in 1896 by two women, Ellen Spencer Mussey and Emma Gillett, for the sole purpose of providing opportunities for those historically outside the mainstream of the legal profession. WCL has a long-standing tradition of educating students about the values of dignity, diversity, and equal rights for all. In addition, it has a reputation for being one of the preeminent institutions in the country for its programs on international law, human rights, business law, and law and government. Because of WCL’s focus on these areas of law, it is no surprise that the school boasts over fifteen professors teaching approximately two dozen courses focused on aspects of labor and employment law. Furthermore, WCL’s clinical programs each intersect with prominent issues in labor and employment law. WCL’s commitment to the importance of labor and employment law is further exemplified by the Labor and Employment Law & Policy specialization within the Program on Law & Government’s Master of Laws (LL.M.) curriculum—one of the few LL.M.’s nationwide that offers this specialization.

In April, 2010, we sought to help supplement and focus this related academic elements already present at WCL by founding the sixth student-run legal publication in this area—*The Labor and Employment Law Forum*.

The *Forum* is a novel publication at WCL and serves as an experiment looking toward the future of legal publications. Early on, the decision was made to publish in the Digital Commons to provide a forum for thought-compelling, legal scholarship with an emphasis on shorter, timely works, with an emphasis on fast-turn around—articles that might otherwise lose their relevance, or simply be overlooked by, traditional law reviews. The Digital Commons gives us, and we hope our readers, the ability to access polished articles in the native format that all legal scholarship is currently being read—electronically. Besides the desire to be “green” and cost-effective, this format allows us to provide material that often disappears into obscurity; transcripts and annotations from events that occur both here at WCL and around the Washington, D.C. area that are vital to the

academic discussion of labor and employment law. Finding the balance between the quality of editing that authors expect from traditional, scholarly legal publications and the necessary rapidity with which the edits must be completed, has constantly lingered in the background behind this first issue.

Our sincere hope is that we have struck this balance and that it is demonstrated in the foregoing pages of our inaugural issue. If our authors' correspondence to us during this process is any indication, we have.

A special thank you needs to be extended to those who were integral in the founding of this publication, including Chris Kyle for his support in getting this publication recognized by the Student Bar Association and *The International Law Review*, *The Journal of Gender, Social Policy & the Law* and *The National Security Law Brief*, Joseph Boddicker, and Ian Spear for their words of wisdom regarding organizational structure and governing policies. Additional gratitude is owed to those individuals who made the publication of this first volume possible, including our Editorial Board and our entire staff and our faculty advisors.

Lastly, we would like to thank the following individuals for their support: Sean Shank for his expertise and wisdom; Justin Shore for his enthusiasm, encouragement and assistance; Richael Faithful for her knowledge and experience; Susanna Birdsong, Amanda Jane Cooney, Mary Francis Charlton, Jessica Clarke, Clifford Clapp, Renee Danega, Kyle deCant, Matt Gómez, Ernest Johnson, Pedro de Lencastre, José Marrero, Caitlin O'Leary and Emily O'Neill for their loyalty and hard work; Mary Rich for her guidance; Professor Robert Vaughn for his insight and support; Dean Kaufman, Susan Lewis, Adeen Postar, and Mary Rich for their expertise and advice.

We would like to thank Professor Susan Carle for serving as our mentor and source of invaluable insight throughout this sometimes exhausting process.

Lastly, we would like to thank each of the authors for publishing in our inaugural issue. Providing our readers with their scholarship is precisely why we undertook this endeavor. Labor and employment law is far from static. Whether stemming from common law, statutory, or constitutional strictures, it is an area of law that is constantly shifting and evolving to meet the changing realities of the global workplace. Though the economy has stabilized in the wake of the financial crisis of 2008, unemployment

remains high domestically and globally. As Dr. King's words evoke, it is in these uncertain times that the protections provided to workers by law may be the only economic security they can depend on as industries engage in reactionary and precautionary downsizing.

The articles and the annotated transcript presented here, in our inaugural issue, touch upon some of the more dramatic concerns, questions, and transitions that arose from both the United States Supreme Court's last term, the appointment of new members to the National Labor Relations Board, and the prelude to Congress's historic repeal of "Don't Ask, Don't Tell."

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WASHINGTON, D.C.
FEBRUARY 2011