**HOFSTRA LABOR & EMPLOYMENT LAW JOURNAL**  
**SPRING 2010**  
**VOLUME 27**

*Editor-in-Chief*  
**BRANDON SIPHERD**

**Managing Editor of Articles**  
**WILLIAM J. JOYCE**

**Articles Editors**  
**MATTATHW A. BROWN**  
**ALISON CAIN**  
**CLAIRE MITCHELL**  
**ANEEDA REHMAN**  
**KRISTIN STURTEVANT**  
**CHRISTOPHER VOLPE**

**Research Editors**  
**MOSHE SINGER**  
**FREDERICK SOLLER**  
**ELIZABETH M. TETRO**

**Notes and Comments Editors**  
**ROSEANNE BEOVICH**  
**JUSTIN V. BUSCHER**  
**ASHLEIGH GARVEY**  
**ADAM J. HILLER**

**Research Editors**  
**MOSHE SINGER**  
**FREDERICK SOLLER**  
**ELIZABETH M. TETRO**

**Symposium Editor**  
**ILYSE RUBEL**

**Alumni Affairs Coordinator**  
**SARAH E. CRABTREE**

**Associate Editors**  
**KEVIN KAY**  
**KATHERINE R. O'BRIEN**  
**HALA TAHAN**

**Business Administrator**  
**JESSIE PIERRE**

**Associate Editors**  
**KEVIN KAY**  
**KATHERINE R. O'BRIEN**  
**HALA TAHAN**

**Allison Dersch**  
**Leah E. Saxtein**

**Senior Staff**  
**JOHN P. LESCHAK**  
**ANTHONY RUSSOLELLO**

**National Advisory Board**  
**DANIEL DRISCOLL**  
**SAMUEL ESTREICHER**  
**ALAN M. KORAL**  
**PAUL SECUNDA**  
**PEARL ZUCHLEWSKI**

**Faculty Advisory Board**  
**GRANT M. HAYDEN**  
**SUSAN JOFFE**

**Alumni Advisory Board**  
**DAVID B. FELDMAN, CHAIR**  
**HON. STEPHEN L. UKEILEY**  
**SARA WYN KANE**  
**MERYL R. KAYNARD**

*Honorary Member*
HOFSTRA UNIVERSITY SCHOOL OF LAW

ADMINISTRATIVE OFFICERS

Nora V. Demleitner, B.A., J.D., LL.M., Dean and Professor of Law
Miriam R. Albert, B.A., J.D., M.B.A., LL.M., Vice Dean for Administration and Clinical Professor of Law
Jennifer Gundlach, B.A., J.D., Vice Dean for Academic Affairs and Visiting Professor of Law
Tobie-Lynn Accardi, B.F.A., Creative Director
Toni L. Aiello, B.A., J.D., M.S.L.S., Reference Librarian
Yasmin Alexander, J.D., M.L.I.S., Reference Librarian
Gerard Anderson, B.A., M.A., Director of Financial Aid
Yvonne V. Atkinson, B.S., Office Manager/Paralegal, Law School Clinical Program
Amy E. Bedell, Director of Public Sector Career Planning
Lisa Berman, B.A., Assistant Dean for External Relations
C. Peter Chao, B.A., M.L.S., M.A., Catalog Librarian
Jeffrey A. Dodge, B.A., J.D., Assistant Dean for Administration and Operations Director of CLE Programs

Dimitrios M. Doussi, B.A., Assistant Registrar
David Dames, B.A., M.L.S., Reference Librarian
Michael J. Ende, B.A., J.D., Assistant Dean for Career Services
Mary Godfrey-Rickards, B.A., J.D., M.L.S., Reference/Access Services Librarian
Dominick J. Grillo, B.A., M.S.L.S., J.D., Assistant Director for Technology and Collection Services
Vernadette Horne, B.A., J.D., Director of Career Services
Brian T. Kaspar, B.S., M.B.A., Registrar
Patricia Ann Kasting, J.D., M.L.S., Reference/Government Documents Librarian
Marie Koch, B.A., Communications Coordinator
Seth Kritzman, B.A., Assistant Director of Enrollment Management
Rou-Chia P. Lin, B.A., M.L.S., Acquisitions Librarian
Lisa McCluskey, B.A., J.D., Director of Student Affairs
Sun Min, B.A., J.D., Director of Communications
Gregory Monfiletto, B.A., M.A., Director of the Annual Fund
Gary Moore, B.S., Assistant Dean for Law School Information Systems
Noreen A. O’Brien, B.A., Director of Enrollment Management – Operations
Claire O’Keefe, B.A., J.D., Director of Student Affairs
Laura Promesti, Executive Assistant to the Dean

David Resto, Assistant Director for Information Services
Linda P. Russo, M.L.S., B.A., Assistant Director for Technical Services
Francesca Sachs, B.A., J.D., Executive Director, Family Law Programs & the LGBT Rights Fellowship
Diane Schwartzenberg, Director of Career Services
Colleen M. Scully, B.A., Operations Coordinator
Kevin Shelton, B.A., M.A., J.D., M.S.L.S., Reference Librarian
Lisa A. Spar, B.A., M.S., J.D., Assistant Director for Reference and Instructional Services
Kelley M. Spencer, B.A., M.A., Director of Alumni Relations
Elaine Vukov, B.A., M.A., Executive Director of International Programs
Michael G. Wagner, B.S., Webmaster
Andrew Wilson, B.A., M.S., Director for Law School Information Systems
Michelle M. Wu, B.A., J.D., M.Libr., Associate Dean for Information Services, Director of the Law Library, and Professor of Law

FACULTY

Sarah Abramowicz, B.A., J.D., Ph.D., Visiting Assistant Professor of Law
Miriam R. Albert, B.A., J.D., M.B.A., LL.M., Vice Dean for Administration and Clinical Professor of Law
The Honorable Leonard B. Austin, B.A., J.D., Special Professor of Law
Barbara S. Barron, B.A., M.A., J.D., Professor of Legal Writing
Ayesha L. Battle, B.A., J.D., Assistant Professor of Legal Writing and Research
Kathleen M. Beckett, B.A., J.D., Professor of Legal Research and Writing
Eric E. Bensen, B.B.A., J.D., Visiting Assistant Professor of Law
Robert Biancavilla, B.A., J.D., M.P.S., A.S., Special Professor of Law
Richard Bock, B.A., J.D., Special Professor of Law
Lawrence Jay Braunstein, B.A., J.D., Special Professor of Law
Alaia S. Burke, B.A., J.D., Professor of Law
Robert A. Baruch Bush, B.A., J.D., Harry H. Rains Distinguished Professor of Arbitration and Alternative Dispute Settlement Law
John Carlson, B.A., J.D., Special Professor of Law
Laurie Cascino, B.A., J.D., Visiting Assistant Professor of Legal Research and Writing
Robin Charlow, A.B., J.D., Professor of Law

http://scholarlycommons.law.hofstra.edu/hlelj/vol27/iss2/8
Jeremy Julian Sarkin, B.A. & LL.B., LL.M., Doctor of Laws, Distinguished Visiting Professor of Law
Andrew Schepard, B.A., M.A., J.D., Director of the Center for Children, Families and the Law and Professor of Law
Norman I. Silber, B.A., M.A., Ph.D., J.D., Professor of Law
Jeffrey Silberfeld, B.A., J.D., Special Professor of Law
Ronald H. Silverman, B.A., J.D., Peter S. Kalikow Distinguished Professor of Real Estate Law
Carol Simon, B.A., M.L.S., M.A., Assistant Professor of Library Services
Roy D. Simon, Jr., B.A., J.D., Howard Lichtenstein Distinguished Professor of Legal Ethics
William M. Skehan, B.A., M.B.A., J.D., Special Professor of Law
Honorable Elaine Jackson Stack, Distinguished Matrimonial Judge in Residence
Amy R. Stein, B.A., J.D., Professor of Legal Writing, Assistant Dean for Adjunct Instruction, Coordinator of the Legal Writing Program
Michael Steinberg, Special Professor of Law
Graham B. Strong, B.A., J.D., LL.M., E. Barrett Prettyman Fellow Visiting Professor of Law
Mary Szto, B.A., M.A., J.D., Visiting Associate Professor of Law
Vern R. Walker, B.A., M.A., Ph.D., J.D., Professor of Law
Bennett J. Wasserman, B.A., M.A., J.D., Special Professor of Law
Stephen Weiner, B.A., J.D., Special Professor of Law
Joel Weintraub, A.B., M.D., J.D., Special Professor of Law and Co-Director of the Institute for Health Law & Policy
Jeffrey M. Wice, Special Professor of Law
Lauris Wren, B.A., J.D., Associate Clinical Professor and Attorney-in-Charge of the Political Asylum Clinic
Michelle M. Wu, B.A., J.D., M. Libr., Associate Dean for Information Services, Director of the Law Library, and Professor of Law
Lisa Yedid-Hershman, B.A., J.D., M.S.W., Assistant Clinical Professor of Law

http://scholarlycommons.law.hofstra.edu/hlelj/vol27/iss2/8
Hofstra Labor & Employment Law Journal
Hofstra University School of Law

Samuel M. Kaynard Award
for
Excellence in the Fields of Labor & Employment Law

Presented to

Wayne N. Outten
Managing Partner, Outten & Golden LLP

We recognize and honor your strong ideals, accomplishments, keen legal acumen, and contributions to the field of labor law.

Volume 27
March 18, 2010
ARTICLES

SUPRME COURT TIPS AGAINST INDIVIDUAL RIGHTS—AGAIN .................... Roger B. Jacobs 267

THE NATIONAL LABOR RELATIONS ACT AT 75: IN NEED OF A HEART TRANSPLANT ............ Charles B. Craver 311

THE USES AND MISUSES OF STATISTICAL PROOF IN AGE DISCRIMINATION CLAIMS .......... Tom Tinkham 357

REMARKS

LABOR LAW: LABOR INITIATIVES IN THE NEW ADMINISTRATION, 2008 NATIONAL LAWYERS CONVENTION OF THE FEDERALIST SOCIETY ...................... Holly Fechner 395

Hon. William J. Kilberg
James A. Paretti
William Samuel
Hon. Timothy M. Tymkovich

NOTES

THE 45TH ANNIVERSARY OF TITLE VII: WHERE WE ARE, WHERE WE’VE BEEN, AND WHERE WE MAY GO ....................... Sarah Crabtree 433

Daphnie Stock

EVALUATING THE LEGALITY OF EMPLOYER SURVEILLANCE UNDER THE FAMILY AND MEDICAL LEAVE ACT: HAVE EMPLOYERS CROSSED THE LINE? ......................... Brandon Sipherd 467

Christopher Volpe