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# Developing Workplace Law Programming: A Labor of Love

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# DEVELOPING WORKPLACE LAW PROGRAMMING: A LABOR OF LOVE

Michael Z. Green\*

## I. INTRODUCTION

When I reflect on my involvement in the Southeastern Association of Law Schools (SEALS), I have nothing but positive memories. I first attended SEALS annual summer program held in Kiawah Island, South Carolina in August 2002. My law school at that time, Florida Coastal, had designated me as a third-year law professor to participate as part of the SEALS young scholars program, now referred to as the New Scholars program.<sup>1</sup> I presented on a labor law topic regarding the regulation of promises during a National Labor Relations Board campaign. I received excellent feedback, albeit mostly from professors without expertise or scholarly interest in labor law.

As a result, I noticed that in such a vast and nurturing conference for developing scholars, there were few labor and employment (now referred to as “workplace”) law programs at SEALS. In fact, two of my key mentors at the time in workplace law, Professor Robert Belton, Vanderbilt, and Professor Cynthia Nance, Arkansas, were at SEALS member schools and had not attended. I attended the SEALS conference again the next year in 2003 when it was held in Amelia Island, Florida, a short drive of less than an hour from my law school. After failing to see any workplace law programming, I decided that I would eventually try to develop proposals covering more workplace law topics at the annual SEALS meeting.

In this enriching scholarly environment, with many programs being moderated by sitting deans from member law schools and several programs devoted to a substantive area of the law, I believed that developing workplace law programming for the annual meeting program would enhance the overall SEALS program offerings. Also, for my own personal advancement, I thought expanding the workplace law programming at SEALS would provide more opportunity for me to attend, especially after I accepted a lateral position at a Texas law school and no longer was associated with a SEALS institutional member school. Further, if I attended future SEALS programs, I would be able to engage with more of my workplace law colleagues on scholarly matters related to the subjects I was exploring in my scholarly endeavors.

In 2005, I was asked to be a moderator for a panel as part of the new scholars’ program, allowing me to be on the giving end of the relationship that fostered my appreciation for SEALS when I first received such help as a new scholar in 2002. Again, I noted that there were not many workplace law professors attending the SEALS conference. There were a few senior workplace

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<sup>1</sup> See generally *New Scholars Committee Mission Statement*, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS, <http://sealslawschools.org/boards-and-committees/new-scholars/> (last visited Sept. 26, 2017).

professors actively involved in SEALS, including Anthony Baldwin at Mercer and Steven Kaminshine at Georgia State to name a couple, but there was still little to no workplace law-related programming.

After my participation in the 2005 program, I actively sought to have my law school, Texas Wesleyan, become an affiliate member of SEALS in 2006. This led to my assignment as a mentor in the new scholars' program for workplace law professor Jarod Gonzalez from Texas Tech in 2007.<sup>2</sup> After working to obtain membership and coordinating the hosting of a reception as a newly-affiliated member during the 2006 program, I also started to participate directly in the process for developing programming for the SEALS conference. The process was somewhat fluid at that time and involved a session near the end of the conference where faculty members proposed certain topics for the program to be held the following year. It became the proposer's responsibility to follow up with the Executive Director, Russell Weaver, working with a SEALS program committee, to continue to flesh out and develop the proposal to eventually get the proposal placed in the SEALS program.

By 2006, I had started to have some success proposing panels involving workplace law for regional People of Color Legal Scholarship conferences where I was able to suggest discussions about race discrimination concerns for workers. Based on those People of Color Legal Scholarship conference contacts, I was asked to join a panel on Law, Economics, and Race held at the 2006 SEALS conference in Palm Beach, Florida where I presented on a workplace law topic.<sup>3</sup> At the close of that conference, I started to make proposals regarding workplace law programming for the SEALS conference and I have been involved in making workplace law proposals for the SEALS conference every year since then.

My first proposal resulted in a panel on "Employment Discrimination Law Fifteen Years after the Civil Rights Act of 1991" held on July 31, 2007 at the SEALS annual summer conference, again in Amelia Island, Florida.<sup>4</sup> That panel included Cynthia Nance from Arkansas as moderator and presentations by me, Kaminshine, Theresa Beiner from Arkansas at Little Rock, and Elizabeth Pendo, then from St. Thomas University.<sup>5</sup> At this same 2007 SEALS conference, another workplace law professor, Paul Secunda, then a faculty member from Mississippi, had helped coordinate a proposal for a panel on "New Approaches to Old Problems in Labor and Employment Law."<sup>6</sup> This panel, held a day and a half earlier on July 30, 2007. included as participants: Dennis Nolan from South

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<sup>2</sup> Although not assigned as his mentor, I also gave feedback to Professor Zak Kramer, a workplace law professor at that time from Arkansas, during the same new scholars' program.

<sup>3</sup> See 2006 ANNUAL MEETING PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS 17-18, <http://sealslawschools2.org/wp-content/uploads/2013/01/2006-program.pdf> (last visited Sept. 26, 2017).

<sup>4</sup> See 2007 ANNUAL MEETING PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS 11, <http://sealslawschools2.org/wp-content/uploads/2013/01/2007-program.pdf> (last visited Sept. 26, 2017).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 4-5.

Carolina, as moderator; and presentations by Secunda, Jeffrey Hirsch, then from Tennessee, Nancy Levit from UMKC, and Marcia McCormick, then from Cumberland School of Law.<sup>7</sup>

For the first time since my initial thoughts going back to 2003, we now seemed to be developing a critical mass of workplace law professors who were starting to attend the SEALS conference and participate in its program. Little did we all know at the time but many of those initial workplace law professors involved in that 2007 SEALS conference would undertake further leadership roles with SEALS including three individuals serving as President and two others, including me, serving as at-large Board members.<sup>8</sup>

There have been so many other workplace law professors who have played a major role in developing workplace law programming at SEALS for the last ten years that it would be a disservice to try and capture them all, because I would just miss someone. But their contributions are captured in the programs listed on the SEALS website.<sup>9</sup> I have learned a lot and gained from the many scholarly workplace law presentations and interactions with workplace law professors who have come to SEALS workplace law programs. The sustaining result from these efforts, and one that I take a lot of pride in playing some role in its achievement, has been the establishment of an expectation that workplace law programs will be a key component of the annual SEALS program and attendance in critical mass by workplace law professors has become an ongoing occurrence.

## II. THE DEVELOPMENT OF WORKSHOPS

Another important development in coordinating the workplace law programming was the development of workshops which first started for workplace law at the 2008 annual meeting held in Palm Beach. A workshop format allowed programming to include several days in a row with panels and discussion groups allocated as a workshop in a particular area. Secunda and I continued to informally propose workplace panels for SEALS programs. After

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<sup>7</sup> *Id.*

<sup>8</sup> Steven Kaminshine served as President of SEALS 2013-14. Jeffrey Hirsch served as President of SEALS in 2015-16. Nancy Levit served as President of SEALS for 2016-17. Marcia McCormick has served in various positions with SEALS including currently being an at-large Board Member whose term expires in 2018. And my term as an at-large Board member expired in 2017. Secunda, who received a SEALS distinguished service award in 2010 for many reasons including his work in helping to develop several technological and Internet components for SEALS programming, and as described further in this Essay, has consistently helped to coordinate with me much of the workplace programming proposed for the SEALS conference since then. Nance, Beiner, and Pendo have also continued to play key roles in participating and nurturing the development of workplace law programming at SEALS.

<sup>9</sup> See *Programs from Past SEALS Conferences*, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS, <http://sealslawschools.org/about-seals/past-programs/> (providing programs from 2003 to 2016) (last visited Sept. 26, 2017).

the successes from the 2007 workplace law programs,<sup>10</sup> we proposed to the Executive Director Russ Weaver and coordinated the programming for four panels that were included as part of an overall workshop in labor and employment law in 2008.<sup>11</sup> Each of the panels were held consecutively from 10:15 a.m. to 6:30 p.m. on Friday, August 1, 2008. Workplace law professors knew they could arrive on that Thursday before and participate and hear creative and engaging programming on workplace law issues and return home on that Saturday to maximize their time at SEALS.

While I continued to come to the SEALS program and suggest informally workplace law programming, others, beyond me and Paul Secunda, also started to propose workplace law programs. With the SEALS development of discussion groups, we were able to add more participants and programs to be incorporated into a Workplace Law workshop to extend over a couple of days.<sup>12</sup>

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<sup>10</sup> Several research projects, discussed during SEALS programming and involving workplace law issues, have been published in law reviews. See, e.g., Bradley A. Areheart, *Accommodating Pregnancy*, 67 ALA. L. REV. 1125 (2016); Llezlie Green Coleman, *Rendered Invisible: African American Low-Wage Workers and the Workplace Exploitation Paradigm*, 60 HOW. L.J. 61 (2016); Nicole Buonocore Porter, *Accommodating Everyone*, 47 SETON HALL L. REV. 85 (2016); Charlotte Alexander, Anna Haley-Lock, & Nantiya Ruan, *Stabilizing Low-Wage Work*, 50 HARV. C.R.-C.L. L. REV. 1 (2015); Jason R. Bent, *Hidden Priors: Toward a Unifying Theory of Systemic Disparate Treatment Law*, 91 DENV. U. L. REV. 807 (2014); Brian S. Clarke, *Obamacourts?: The Impact of Judicial Nominations on Court Ideology*, 30 J.L. & POL. 191 (2014); Joseph Fishkin, *The Anti-Bottleneck Principle in Employment Discrimination Law*, 91 WASH. U. L. REV. 1429 (2014); Charlotte Garden, *Union Made: Labor's Litigation for Social Change*, 88 TUL. L. REV. 193 (2013); Herman N. (Rusty) Johnson, Jr., *Disambiguating the Disparate Impact Claim*, 22 TEMP. POL. & CIV. RTS. L. REV. 433 (2013); Jessica L. Roberts, *Health Law as Disability Rights Law*, 97 MINN. L. REV. 1963 (2013); Joseph A. Seiner, *Plausibility and Disparate Impact*, 64 HASTINGS L.J. 287 (2013); Michael Z. Green, *Against Employer Dumpster-Diving for Email*, 64 S.C. L. REV. 323 (2012); Ariana R. Levinson, *Toward A Cohesive Interpretation of the Electronic Communications Privacy Act for the Electronic Monitoring of Employees*, 114 W. VA. L. REV. 461 (2012); Mark C. Weber, *The Common Law of Disability Discrimination*, 2012 UTAH L. REV. 429; Deborah A. Widiss, *Changing the Marriage Equation*, 89 WASH. U. L. REV. 721 (2012); Theresa M. Beiner, *Some Thoughts on the State of Women Lawyers and Why Title VII Has Not Worked for Them*, 44 IND. L. REV. 685 (2011); Ann C. Hodges, *Fallout from 14 Penn Plaza v. Pyett: Fractured Arbitration Systems in the Unionized Workplace*, 2010 J. DISP. RESOL. 19; Richard Moberly, *The Supreme Court's Antiretaliation Principle*, 61 CASE W. RES. L. REV. 375 (2010); Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L.J. 1079 (2010); Ani B. Satz, *Overcoming Fragmentation in Disability and Health Law*, 60 EMORY L.J. 277 (2010); Rachel S. Arnow-Richman, *Employment as Transaction*, 39 SETON HALL L. REV. 447 (2009); Melissa Hart & Paul M. Secunda, *A Matter of Context: Social Framework Evidence in Employment Discrimination Class Actions*, 78 FORDHAM L. REV. 37 (2009); Zachary A. Kramer, *Heterosexuality and Title VII*, 103 NW. U. L. REV. 205 (2009); Marcia L. McCormick, *The Truth is Out There: Revamping Federal Antidiscrimination Enforcement for the Twenty-First Century*, 30 BERKELEY J. EMP. & LAB. L. 193 (2009); Jarod S. Gonzalez, *Employment Law Remedies for Illegal Immigrants*, 40 TEX. TECH. L. REV. 987 (2008); Jeffrey M. Hirsch, *The Law of Termination: Doing More With Less*, 68 MD. L. REV. 89 (2008).

<sup>11</sup> See 61<sup>ST</sup> ANNUAL MEETING PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS 56-58, <http://sealslawschools2.org/wp-content/uploads/2013/01/2008-program.pdf> (last visited Sept. 26, 2017).

<sup>12</sup> See 2016 ANNUAL MEETING PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS 37-52,

This sent a signal to workplace law professors that there would be a robust set of programming in their field that could be centered around a couple of days of the conference without being spread out over the entire week, engendering efficient use of time and commitments to building fellowship and community during SEALS. So the workshop concept enhanced the opportunities for further collaboration in coordinating workplace law programming at the SEALS annual meeting. With Secunda and I informally involved in developing the programming for the workplace law workshops, we also informally became point persons for those seeking to propose or become a part of a workplace law program at SEALS. The Executive Director began to direct questions about workplace law programming to the two of us. It has been an ongoing congenial and collaborative relationship to work with Secunda in crafting and coordinating workplace law programming for SEALS.

### III. THE NEW VOICES IN WORKPLACE LAW PROGRAM

In 2012, and consistent with SEALS' goals of pursuing developmental and feedback opportunities for new scholars<sup>13</sup>, Secunda and I proposed a New Voices in Workplace Law program for the SEALS 2013 annual meeting. This program would focus on drawing from the critical mass and vast experience of workplace professors who were consistently attending SEALS. We asked them to read and comment on drafts of scholarly papers submitted by newer workplace law scholars. I drafted some of the language describing the program based upon a similar program that Linda Jellum, from Mercer and a regular SEALS contributor, had crafted for a New Voices in Administrative Law program held at the Association of American Law Schools annual program in January 2013.<sup>14</sup> Five newer workplace scholars submitted papers for participation in the inaugural 2013 SEALS New Voices in Labor and Employment Law. At the program held on July 13, 2013, participants considered papers provided by newer scholars including Charlotte Alexander, Georgia State; Deborah Eisenberg, Maryland; Joseph Fishkin, University of Texas; Charlotte Garden, Seattle; Jeffrey Jones, Lewis & Clark; Robin Runge, North Dakota; and Marcy Karin, Arizona State.<sup>15</sup>

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[http://sealslawschools.org/wp-content/uploads/2016/11/SEALS-Annual-Conference-Program\\_2016\\_LR\\_nocover.pdf](http://sealslawschools.org/wp-content/uploads/2016/11/SEALS-Annual-Conference-Program_2016_LR_nocover.pdf) (last visited Sept. 26, 2017) (referring to Workplace Law workshop spanning three days from Aug. 6-8, 2016).

<sup>13</sup> See Nancy Levit, *Scholarship Advice for New Law Professors in the Electronic Age*, 16 WIDENER L. J. 947, 966 (2007) (describing SEALS New Scholars Workshop).

<sup>14</sup> See generally *Call for New Papers: New Voices in Administrative Law*, WASHINGTON & LEE FACULTY BLOG (Sept. 26, 2012), <https://wlulawfaculty.wordpress.com/2012/09/26/call-for-papers-new-voices-in-administrative-law/> (describing New Voices in Administrative Law program call by Professor Jellum).

<sup>15</sup> See 2013 ANNUAL CONFERENCE PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS 32-33, <http://sealslawschools.org/wp-content/uploads/2013/12/2013-SEALS-Program-.pdf> (last visited Sept. 26, 2017) (discussing program held on Aug. 7, 2013).

The New Voices in Labor and Employment Law program continued in 2014 with new scholars papers from Brian Clarke, Charlotte; Lezlie Coleman Green, American; and Cynthia Tompkins, Liberty.<sup>16</sup> With its ongoing success, the New Voices in Labor and Employment Law program was continued in 2015 with new scholars papers from Bradley Areheart, Tennessee, and Veronica Root, Notre Dame.<sup>17</sup> Again, the New Voices in Labor and Employment Law program continued in 2016 with newer scholars' papers from Stephanie Bornstein, Florida; Stacy Hawkins, Rutgers; and Jamillah Williams, Georgetown.<sup>18</sup> While agreeing to continue the New Voices in Labor and Employment Law program for 2017, the coordinators, Secunda and I, agreed to open the program up to more senior workplace scholars and changed the name of the program to New and Existing Voices in Labor and Employment Law.<sup>19</sup> For 2017, papers from newer voices in workplace law included Deepa Das Acevedo, Pennsylvania; Michael Oswalt, Northern Illinois; and Jennifer Shinall, Vanderbilt were discussed as well as papers from existing voices Richard Carlson, South Texas, and Minna Kotkin, Brooklyn.<sup>20</sup> We have already submitted a Call for Participants in the New and Existing Voices in Labor and Employment Law program to be held at the SEALS annual meeting in Fort Lauderdale, Florida in summer 2018.

#### IV. CONCLUSION

The development of workplace law programming at SEALS has been a collaborative and rewarding process. My involvement in that process has been a labor of love. Through networking with various workplace law professors over the years, we have developed a thorough and significant e-mail list of workplace law professors who have participated in prior workplace workshops held at SEALS. Scores of scholarly publications as well as scholarly discussions about pressing workplace matters have developed through the programming at SEALS over the last ten years. Many friendships and mentoring relations have also

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<sup>16</sup> See 2014 ANNUAL CONFERENCE PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS 38, [http://sealslawschools.org/wp-content/uploads/2015/05/SEALS\\_Annual\\_Conference\\_Program\\_2014\\_Final.pdf](http://sealslawschools.org/wp-content/uploads/2015/05/SEALS_Annual_Conference_Program_2014_Final.pdf) (last visited Sept 26, 2017). Paul Secunda did not participate in coordinating workplace law programming and the New Voices in Labor and Employment Law program at SEALS for 2014 through 2016. He has returned to help coordinate workplace law programming and the New Voices in Labor and Employment Law Program for 2017.

<sup>17</sup> See 2015 ANNUAL CONFERENCE PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS 50, [http://sealslawschools.org/wp-content/uploads/2016/11/SEALS-Annual-Conference-Program\\_2015\\_LR.pdf](http://sealslawschools.org/wp-content/uploads/2016/11/SEALS-Annual-Conference-Program_2015_LR.pdf) (last visited Sept. 26, 2017).

<sup>18</sup> See 2016 ANNUAL CONFERENCE PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS 52, [http://sealslawschools.org/wp-content/uploads/2016/11/SEALS-Annual-Conference-Program\\_2016\\_LR\\_nocover.pdf](http://sealslawschools.org/wp-content/uploads/2016/11/SEALS-Annual-Conference-Program_2016_LR_nocover.pdf) (last visited Sept. 27, 2017),

<sup>19</sup> See 2017 ANNUAL CONFERENCE PROGRAM, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS, <http://sealslawschools.org/submissions/program/programwp.asp> (last visited Sept. 26, 2017) (referring to program scheduled for 1:30 to 3:15 p.m. on Aug. 4, 2017).

<sup>20</sup> *Id.*

prospered amongst workplace law professors. When I look back at the many positive results from being involved with SEALS over the past ten years, the sustained development of workplace law programs and relationships with workplace law professors is what I will cherish the most.

I have seen similar networks develop in other programs such as the collaborative research network for labor rights with Law and Society.<sup>21</sup> However, the small and informal nature of the SEALS program along with the timing of usually less than a month before the Fall semester begins, makes the SEALS workplace law workshops a welcome and productive treat or retreat for hard working scholars as the summer ends. The increasing number of SEALS workplace law workshop participants including the number of workplace faculty who continue to return each year demonstrates the continued value of the workplace law programming.

As a result, the development of workplace programming at SEALS has provided an excellent example of how substantive area work groups can thrive at SEALS. To further capitalize on some of the key lessons learned by substantive law programming through examples like workplace law, SEALS has asked Caprice Roberts at Savannah Law School to serve as Vice-Chair of Programming for the 2017 conference.<sup>22</sup> In that role, she has become a more formal clearinghouse and champion for the development and coordination of substantive area programming groups at SEALS. She has established “Resource Teams” of professors in substantive areas who can formally be called upon to help answer questions for those seeking to propose and expand upon programs at SEALS in various substantive law areas. Through the work of Roberts, more than thirty Resource Teams have been established.<sup>23</sup> These actions further crystalize the important work started a little more than ten years ago in developing and nurturing consistent workplace programming at SEALS.

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<sup>21</sup> See generally *Collaborative Research Networks*, LAW & SOC’Y ASS’N, <http://www.lawandsociety.org/crn.html#8> (last visited Sept. 26, 2017).

<sup>22</sup> See *Resource Teams*, SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS, <http://sealslawschools.org/boards-and-committees/resource-teams/> (last visited Sept. 26, 2017).

<sup>23</sup> See *id.*; see also Caprice L. Roberts, *SEALS Advancing Scholarship*, 86 U.M.K.C. L. Rev. 583, 583-54 & n.7 (2018) (discussing the development of the subject-matter resource teams). Paul Secunda and I are part of the Workplace Law Resource Team as well as Jeffrey Hirsch, Nancy Levitt, and Marcia McCormick with Elizabeth Pendo as Disability Law liaison for the Workplace Law Resource Team with the Health Law & Bioethics Resource Team.