



Conference Report

Working time, discrimination and the law: the family responsive workplace in Europe and the United States

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WorkLife Law Program, American University WCL
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Program on WorkLife Law
American University Washington College of Law; 4801 Massachusetts Ave NW
Washington DC 20016; 202 2744494; <http://www.wcl.american.edu/gender/worklifelaw>

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Introduction

Joan Williams, American University Washington College of Law welcomed all participants to the Second Annual Working Time Conference, “Working Time, Discrimination and the Law: The Family Responsive Workplace in Europe and the United States.” Williams thanked the Friedrich Ebert Foundation for their sponsorship and financial support. She also thanked Washington College of Law for its support and remarked on the appropriateness of the response of a law school with such a focus on international policy and human rights to the new international dimension of Work Life law.

Williams highlighted the mission of WorkLife Law to address innovative issues across a number of borders: national borders, disciplinary borders and borders between researchers and activists. She reminded participants of the focus of the First Annual Working Time conference¹ on new working time initiatives in Europe and suggested that that conference had been successful in opening the policy discussion on the role of working time initiatives in achieving family responsive workplaces.

Williams discussed the importance of addressing the gap between the ideal and the reality of European working time models: the former puts Europe into an undifferentiated lump of ‘nice but completely irrelevant to us’ box; the latter allows us to look at real problems and policy solutions, and examine where these might fit in the reality of the United States. The goal of this year’s conference is to shift the discussion of mothers and work away from “opting out” to a sustained examination of what causes mothers and others to abandon work as the only way to do right by others.

Ariane Hegewisch, American University Washington College of Law also thanked the conference participants, the Friedrich Ebert Foundation and American University Washington College of Law. She suggested that since the First Annual Conference working time adjustment policies, particularly in France and Germany, had come under a lot of attack, a development often interpreted in U.S. media as proof of the failure, if not futility, of working time regulation overall. Yet in spite of these conflicts, there has been no challenge to the basic tenets of working time regulation in Europe such as annual leave, paid sick leave, parental leave and restrictions of overall working hours. Such rights are taken for granted by employees, whether they are parents or not, and are an accepted part of doing business for employers, even if there are pressures to make adjustments at the margins.

¹ A report of the 2004: ‘Working time for working families: Europe and the United States’ conference is available at: <http://www.wcl.american.edu/gender/worklifelaw/publications/Working%20Time%20conference%20report.pdf>
The papers from the 2004 conference have been published in: Working Time for Working Families: Europe and the United States; Friedrich-Ebert- Stiftung Washington DC, 2005; ISBN 0-9740429-4-3

Nevertheless, even if Europeans might have more leisure time they certainly have not overcome gender discrimination at work. In Europe too women are the primary carers, have different working patterns from men and are penalized for it economically. This is particularly so in Germany and the UK, the two European countries presented at this conference, where part-time work is the predominant means of combining work and motherhood. Pregnancy discrimination, almost three decades since the relevant legislation was passed, is alive and kicking. A rapid increase in non-standard working hours makes it ever harder to put together reliable timetables for home and work. And in both Europe and the United States it continues to be possible for politicians to simultaneously proclaim the need for better support for working parents and for greater deregulation of working time, blissfully ignoring the contradiction between the two. The challenge is to shift the public policy discourse so that it will be much harder for such contradictions to pass. Hopefully the inter-continental conversation at this conference can play a small part in this venture.

Panel I

“Stereotyping, opting out and the law” was moderated by **Kyle Hicks, Labor Counsel for Senator M. Enzi.**

Pamela Stone, Hunter College and Graduate Center, CUNY, presented **“Career women, working time, and opting out,”** an examination of high-achieving women leaving the workplace to become stay-at-home mothers. These decisions have received considerable media attention, with the media clearly embracing the theme of “opting out” and related notions of women “choosing” not to work or rejecting the idea of “having it all.”

Stone highlighted trends in the share of “stay-at-home” mothers among different groups of women between 1985 and 2004: Over the long-term, there has been a clear decline in the share of non-economically active mothers of young children, but over the short term, since the late 1990s, there has been a discernible increase in their numbers. She argued that it is remarkable that it seems widely accepted that almost a third of highly educated women are out of the workforce when a similar rate among men would almost certainly lead to a national outcry about human capital loss.

Stone conducted in-depth interviews with over 50 highly educated women, all of whom had worked for desirable “employers of choice.” Several common themes emerged: The women tended to frame their decision to drop out of the labor market within a “choice rhetoric,” and saw it as a privilege to be able to make this choice. On further exploration, however, the large majority of women stated that they had never imagined that they would not be employed and that their decision to leave the workforce was highly influenced by the lack of accommodation in the workplace. Most women’s employers had good maternity leave policies, but no framework or precedent for accommodating returning mothers. There were no positive role models of women combining active parenting with careers. Requests for part-time work were either denied or, when granted, did not really lead to proportionally reduced work loads or resulted in demotion and marginalization to the extent that the women felt that they might as well leave. Direct and indirect economic restructuring exacerbated existing problems. Flexible working time arrangements often depended precariously on one supervisor and were lost when new managers were appointed. Finally, Stone pointed to the hegemony of husbands’ careers and noted that as

husbands' careers advanced, it often fell to women to stay home, since typically they were earning less money. Under the circumstances, women frequently justified their decision as economically rational.

Stone then highlighted the difficulty and anguish many women faced in deciding to leave the workplace, and their continued orientation towards work. Two-thirds of the women she interviewed planned to return to work, but were not confident about their ability to do so. In conclusion, she asserted that the recent increase in the number of women leaving the workplace is not a revolution, but an uptick at best. The media characterizes this as reflecting women's "choices," but Stone invoked the notion of a "choice gap" to better reflect the constraints on these choices. Finally, she noted an irony in her finding that many of the highly educated women in her study plan on changing careers when they return to work, many voicing a desire to go into teaching, a popular career choice for highly educated women in the 1920s and 1930s.

Joan Williams, American University Washington College of Law, presented "Turning stereotyping into direct discrimination: U.S. legal cases". She began by sharing how she too has been fascinated by the opt-out phenomenon but would described it not as opt-out but "pushed out". She said that in legal terms having a choice is not necessarily inconsistent with discrimination, and that there is no need to determine whether there is choice or not in order to examine discrimination. Williams then discussed the concept of the "maternal wall" preventing working mothers' advancement. This is well illustrated by the difference between the gender *wage gap* and the *family gap*: women at age 30 earn nearly as much as men; after the age of 30 the proportion of mothers increases and the wage gap widens dramatically. The traditional wage gap analysis exaggerates women's earning by comparing full-time men to full-time women: the family gap compares working mothers to others; this demonstrates clearly the economic penalties for motherhood.

Williams emphasized the limitations of focusing on the legislative arena for correcting work-life issues, given the lack of political will and a mantra of "no new taxes" as well as the fervent opposition of powerful business groups to regulation seen as "employer mandates". She suggested that Americans are not willing to wait for new legislation and instead are addressing the problem in a typically Americans way: through litigation. The WLL has documented over 200 'maternal wall' type law suits where plaintiffs gained relief. These cases are increasing: there have been more in the past five years than in the decade of the 1990s.

Several discrimination litigation theories are potentially relevant: disparate impact, disparate treatment, retaliation, constructive discharge, and hostile work environment. Williams explained the importance of how lawyers frame the issues. Disparate impact cases are costly and difficult to litigate in the United States. Reframing the issue as one of stereotyping, as a result of workplaces being designed around male norms, will allow a claim of direct discrimination. When using stereotyping evidence, there is no need for a male comparator, overcoming a major problem for the majority of women who work in predominantly female workplaces.

Williams documented the importance of the social science of the maternal wall. She discussed negative competence assumptions, hostile and benevolent stereotyping, attribution bias, and racialized subtypes and the three trigger points for these assumptions: pregnancy, returning from maternity leave, and going part-time. Williams noted that courts have recognized maternal wall stereotyping. She highlighted important cases like *Nevada v. Hibbs*, 123 S. Ct. 1972 (2003) where Supreme Court Justice Rehnquist's stress on family values demonstrated that maternal wall discrimination is not simply a "lefty" issue; and *Back v. Hastings*, 2004 U.S. App.

Lexis 6684 (2d Cir. Apr. 7, 2004) which provides important precedent because it ruled that if stereotyping is proven, a male comparator is not necessarily required.

In discussing how the law changes social norms, Williams highlighted the major potential liability for employers in these cases, and the importance of working with both plaintiffs and management side employment lawyers. She noted that for employees, the law shifts the language from "choice" to "rights". For employers, the change shifts the language from "optional employee benefit" to "risk management."

Cynthia Fuchs Epstein, CUNY, provided the first response. Fuchs Epstein began by pointing out the reversal of public attitudes towards women in the workplace and conceptions about motherhood: 1950's criticism of "momism" centered on an overbearing suffocating mother being too involved in her children's lives. Today the ideal is of the 24/7 mother where hours spent with a child have become a proxy for excellent achievement and commitment. Such middle and upper class ideals of motherhood seep down into lower and working class ideologies of childcare: 'mother care' is seen as optimal, surrogate care is decried. The left shares responsibility for this by focusing on the exploitation of nannies (who provide only 3% of childcare) rather than the positive aspects of socialized care and the need to organize childcare workers. Fuchs Epstein highlighted the importance of stereotypes and how these guide discussion and perception on work family issues. Many women have internalized these stereotypes, feeling guilty and inadequate both as mothers and as workers, and consequently feeling unable to have a real stake in the workplace.

Michelle Travis, San Francisco School of Law, as second respondent focused on the synergy between sociological studies and litigation. She discussed the attractiveness of using Title VII in gender stereotyping, not least because such a strategy can draw on precedent developed in litigation on transsexual, transgender and sexual orientation discrimination. However, the limits of a focus on intentional discrimination are the lack of an obligation on employers to change workplace organization when a case is won, in contrast to successful disparate impact claims. Travis proposed a strategy of pushing Title VII on both the direct and indirect discrimination fronts.

That said, she also acknowledged the important "shadow" of the law in changing employer practice, both as a means of avoiding litigation and because employers want to be seen to be above minimum standards. In relation to the Americans with Disabilities Act (ADA), for example, lawyers report that employers often go far beyond the accessibility requirements set out in the law in order to avoid litigation; similar trends could be seen regarding sexual harassment policies.

Finally she argued that while lawyers have done a good job at moving away from "choice" rhetoric to describe women who exit the workplace due to work/family conflicts, the "choice" rhetoric should be applied much more strongly to employer practices: to demonstrate that employers have and make choices in the way they organize work.

Discussion:

- Low income families are not able to 'opt out' or reduce working time. Policy solutions need to include paid leave and affordable childcare, an emphasis not just on new laws or litigation but also new resources.

- Sex discrimination is not the only route of litigation: a Las Vegas hotel was recently fined \$25 million in part for having endangered workers and customers health by not providing paid sick leave and hence encouraging contagious workers to come to work.
- Push-pull between public policy and public attitudes: historical precedent e.g. in WWII shows how quickly public attitudes to women and work can change in extreme circumstances through public policy. The example of Europe shows that public attitudes regarding the right to state support for families can shift public policy. The question in the United States is how to convert women's internalized responses to the conflict between motherhood and work into broader cultural assumptions about rights, strong enough to shift public policy. Germany shows how difficult it is to shift attitudes; assumptions about the need for extensive mothering are strongly held and unaffected by years of evidence on the benefits of communal childcare in Belgium and France.
- Conflict between full-time work norms, parenting norms and basic facets of public life such as the length of the school day or school holidays, must be addressed more strongly.

Panel II

“Caregiving, non-standard hours, and the law” was moderated by EEOC Commissioner Stuart Ishimaru.

Heidi Hartmann, Institute for Women’s Policy Research, presented “**Care’s consequences: The lifetime gender earnings gap**” and analyzed the systematic wage and earnings gap between men and women based on 1983 to 1998 data from the Panel Study of Income Dynamics. She suggested that on the face of it, equality has increased significantly since 1960: women’s labor force participation is increasingly like men’s; occupational segregation has declined; the wage gap has narrowed by more than a third. There now are a substantial number of married couples where women out-earn their spouses: 15% among the total sample and over 45% among married women on high incomes (at least \$50,000 p.a.). Yet, when earnings over several years are compared rather than at a one time snap shot, there continued to be a major gap. One reason for this is that women continue to be much more likely to take time out of the labor market: 84% of men never take a year out of work, while 58% of women are out of the labor market for at least one year. Such ‘time-out’ carries substantial and long-term penalties. Over the 15-year period the overall earnings gap between men and women is dramatic: women’s average earnings were only 38% of men’s. The more time spent out of the workforce, the greater the long-term wage penalty; even a gap of one year has a significant long-term impact, and an impact far greater than for a person who was unemployed for the same period.

A component of the wage gap is continued occupational segregation. The large majority of women work in female dominated occupations, and the large majority of men in male dominated ones. Dividing jobs into male and female and then, within each, three sub categories of ‘elite jobs’, ‘good jobs’ and ‘less-skilled jobs’ shows that average earnings in female elite jobs just compare to average earnings in male less skilled jobs. When women work in male dominated jobs they tend to benefit from higher pay, particularly in the middle jobs (in elite jobs the earnings differential remains substantial); however such jobs generally require long hours, making them less feasible for women with care responsibilities.

The data suggests two broad groups of women: those who are fully committed and never drop out and those who have children and have some time out of the labor market (this time increases dramatically once there is more than one child). This is an area requiring further research.

Hartmann concluded with emphasizing the role of unbroken labor market attachment for wage equality. High quality part-time jobs can play a part in helping women stay in employment (combined of course with other policies). Currently such jobs are virtually non-existent, while demand for quality part-time jobs is high from both men and women.

Horst Peter Kreppel's talk on “**Equal treatment for part-time workers: The evolution of European legal approaches**” focused on the evolution of legislative approaches to part-time work in the European Union up to the European *Part-time Directive (97/81/EC)*. The Part-time Directive has a dual purpose: to provide part-timers with a right to equal treatment with full-timers, and to promote part-time work. While the directive in principle appears to provide considerable protection against direct and indirect discrimination of part-timers, in practice it is difficult to enforce because claimants have to rely on a “comparable full-time worker” in the same establishment, similar work or occupation and same contractual relationship – a requirement increasingly difficult to achieve given current labor market structures. The obligation to promote part-time employment on the other hand is weakly worded and has not been transcribed into national law in several member states. The question is why such a weak provision was passed.

The growing phenomena of part-time work, and the need to provide some protection, was first discussed in the European Council in 1979. However, the adoption of a directive (which enforces legislative change in member states) was repeatedly stalled by opposition from the then Conservative government of the UK (and Germany). Arguably the protection of voluntary part-time work was also not a priority for trade unions who were focused on full-time male trade union members and were suspicious of part-time work as undercutting good jobs for their members. The passing in 1994 of ILO Convention 175 on Part-time work revitalized the discussion. (So far only six countries have signed the convention, probably due to its inclusion of the field of social security and state pension; EU discrimination and employment protection legislation does not apply to statutory benefits). The final Directive as passed in 1997 was negotiated directly between employer associations and trade unions at European level, and Kreppel argued that willingness to show that such a procedure can work let trade unions to accept more compromises than they perhaps otherwise would have. A further factor explaining the weak approach is a shift in attitudes towards part-time work in the EU, from focusing on protecting part-time work as a form of atypical employment, to promoting it as part of a job creation strategy.

Kreppel pointed out that almost all the cases before the European Court of Justice dealing with part-timers were solved primarily through favorable judgments based on the finding that the overwhelming majority of part-timers are women and that therefore unequal treatment of part-timers constitutes discrimination on the grounds of sex. He then reviewed the two most recent cases on part-time discrimination heard by the European Court of Justice, under the Part-Time Directive: *Wippel v. Peek and Cloppenburg*, the only case heard under the Part-time Directive, concerned a female on-call worker in Austria, was lost, and in his opinion was a badly selected case in the first place; and *Nikoloudi v. Organismos Tilepikoinoinion Ellads AE*, the case of a Greek janitor being excluded from a pensions scheme because it was limited to full-time

workers, as per collective agreement. Here the Court held that there was discrimination on the grounds of sex.

Kreppel suggested that, because of political tensions within the European Community and the attempts of at least some member states to weaken both the role of the European Commission and of trade unions in social legislation, politically it would be unwise to revisit the Directive at this point in time. Kreppel proposed a dual strategy of using selective cases for strengthening the legal protection of part-timers via the judgments of the ECJ and at the same time bolstering the political discussion with a soft law approach to change the negative image of part-time work.

Juliet Bourke, Aequus Partners, rounded out the panel with her presentation on “**Care giver discrimination in Australia in law and litigation**”. In Australia, care giving, and the related requirement for workplace flexibility, has become a BBQ stopper- everyone, including politicians, is talking about it. Bourke began by providing background on the Australian labor market: 70% of women aged 15-64 are employed as compared to 82% of Australian men; 27% of Australian workers are part-time, and of these 72% are women. In New South Wales (NSW), the state where she works, 42% of the population over the age of 18 care for another adult or child and only half of them are in the workforce.

As an in-house government lawyer, Bourke was asked to amend the NSW Anti-Discrimination Act 1977 with a prohibition of discrimination in employment against carers; the legislation was introduced in 2001 and goes beyond the Australian Sex Discrimination Act 1984 by not only making direct discrimination in relation to ‘family responsibilities’ unlawful but by also covering indirect (disparate impact) discrimination, including an obligation for ‘reasonable accommodation’ on employers; and protecting both men and women. The defences are limited, namely an employer must demonstrate that the inherent requirements of the job make accommodation impossible, or that an accommodation would cause the employer an unjustifiable hardship. The legislation (in NSW, Australia and other States) has been defined in a number of court cases: the first wave of cases typically concerned women with children who had been denied a change in working practices after returning from maternity leave. In the second wave of cases, in 2004 and 2005, the profile has expanded to include men, elder care, and the use of discrimination principles in cases taken under industrial law. In the main courts have focused on the question of whether a requirement or condition (eg to work full-time) is reasonable in all the circumstances. Employers have lost cases where they could not demonstrate that they actively investigated alternatives; in some cases judges ruled for trial-periods, offering to the employer the option of having their case reassessed after a few months if the new arrangement failed to work. Similarly courts expected reasonable compromise from plaintiffs.

She noted that the legislation was very proactive regarding gender equity and the engagement of men in care giving responsibilities, recognition of diverse caring relationships, and stimulating workplace change. But the legislation continued to fall short because instead of providing an actual right to flexible working it continued to force people to take the more cumbersome and uncertain route of litigation to prove care giver discrimination. The NSW legislation is seen as best practice in Australia and has been copied by another state.

Bourke noted a number of factors that contributed to the success of the Carer’s legislation: a robust judiciary willing to challenge employers; acceptance that flexible work practices will benefit an employer, stress on the principle of mutuality on the part of employers and employees; the courts’ use of a trial-period strategy. However, she suggested that this

legislation is only one step in addressing the problems of part-time work and gender inequality in the workplace, and on its own cannot compensate for the absence of quality affordable care.

Respondents:

Carin Clauss, University of Wisconsin Law School, reflected on Kreppel's distinction between *tough* and *soft* law and emphasized that, while there might be some scope for soft law, the call for new 'tough' laws, including legislation for minimum wage, mandatory equal treatment for full-time and part-time jobs, incentives for creating good quality part-time jobs, and legislation to limit overtime and regulate comp-time, must be part of any campaign to change workplace practices.

Clauss stressed that as long as all skill levels of employees are expected to work exceptionally long hours, the ideal worker will always be one without outside responsibilities. She again stressed that while a soft law approach suggesting best practices models is important, there must be some mandatory legislative initiatives. She reflected on her own experience as a senior manager in the Federal Government: she was told she had to convert at least 10% of professional jobs to part-time jobs as part of work family policies; this worked out very well in practice but she would not have gone down this route if there had not been a firm mandate.

Clauss also talked about the Australian model and the unique characteristics of the Australian labor courts. She wondered whether a similar model could occur in the United States where the courts defer to employers under the Business Judgment Rule. She concluded that we must examine whether the structure of resolution of labor law disputes still works.

Judy Scott, Service Employees International Union (SEIU) then suggested that in addition to legislation, collective bargaining can be one of the easiest vehicles in extending equity to workers. However, she noted, that only 8% of workers today are organized in unions. She also pointed out the weaknesses of our National Labor Relations law. She noted that a large number of workers, many women, are completely left out of employment protection by being characterized as "independent contractors" such as homecare workers and childcare providers. Scott highlighted the SEIU strategy of exploiting all legal avenues instead of just staying within the scope of the National Labor Relations Board (NLRB). For example, in Illinois SEIU helped childcare providers to collectively negotiate higher reimbursement rates from the state; in order to make it possible for childcare providers, who formally are independent contractors, to negotiate collectively, SEIU obtained an executive order for anti-trust exemption: otherwise the childcare workers could have been accused of forming a cartel. Scott spoke of reputable human rights organizations like Human Rights Watch and their condemnation of the poor status of the U.S. system of labor relations. Scott suggested, as a labor rights strategy, the monitoring of U.S. employment practices of U.S. corporations which have signed code of practices for their operations abroad but break basic labor law at home; the enforcement of the minimum wage statute is an important example.

Discussion:

- **Reasonable accommodation:** The concept of 'reasonable accommodation' was developed first in relation to disability discrimination; in the United States the concept is also found in approaches to providing religious rights. The concept of 'reasonable accommodation' in NSW is a compromise: the original intention was to develop a direct

right to flexible working. The European Union 2000 Framework Directive on equal treatment contains the concept of ‘reasonable accommodation’, transposed from the U.S. Americans with Disabilities Act of 1990, and included without definition; in typical manner it is left to European courts to define what the term might entail.

- Role of law in changing social attitudes: It is of course difficult to isolate cause and effect. The introduction of the NSW law included compulsory training for all lawyers on the scope and definitions of the law, to be updated every three years, as a condition of being licensed in NSW. This has helped with the quality of cases and judgments. In Germany the change in attitudes to part-time work has occurred slowly; even though the EU Part-time Directive is weak, it has created discussions in the union movement.

Panel III

“Work family conflict in unionized workplaces” was moderated by **Shelley Waters Boots, New American Foundation.**

Mary Still, American University Washington College of Law, spoke on **Work family conflict: an analysis of union arbitration in the United States**. Mary Still’s research is based on a novel database for work family research: arbitration cases involving disciplinary action against workers in the context of caregiving decisions. Still argued that this database allows us to move beyond the traditional focus in the work family conflict field on affluent dual earner couples and to explore what work family conflict looks like for blue collar families. After all, blue-collar workers tend to rely more on family members for child care, and this type of care tends to break down or is less reliable than daycare center used by affluent workers.

The WLL research is based on publicized arbitration decisions as well as work family cases from the arbitration databases of the Amalgamated Transit Union (ATU), Communications Workers of America (CWA) and the Teamsters for United Parcel Services (UPS). Most grievances are the result of last minute schedule changes, and the worker’s refusal to work additional hours. All of these data sources show a marked increase in the number of cases since the mid 1990s, possibly because the passing of the FMLA has resulted in greater awareness and expectation among workers regarding work family compatibility. The arbitration cases demonstrate that men are just as likely as women to face work family conflict, and possibly more so because caring for family members is not expected from men. Added to this is a greater reluctance among men (demonstrated in case detail) to be open about their reason for not being able to work additional hours, resulting in greater antagonism and more disciplinary situations.

Still showed that there is no clear sense of arbitrators finding for or against workers, and that a similar situation can lead to opposite outcomes. However, both sides are much more likely to win if they can demonstrate that they made reasonable efforts to accommodate the other.

Netsy Firestein next spoke on **Union approaches to work and family in the United States**. Unions have been active in the field of work family compatibility both through contract negotiations and by lobbying for improved legislation, which then acts as the basis for further negotiations. A good example for this approach is the Family and Medical Leave Act (FMLA). Unions were instrumental in getting the FMLA passed (and the California Paid Leave Act). Yet

most union contracts now go beyond the rights offered under the FMLA: union members are 3.6 times more likely to have extended leave benefits than non-union employees. The benefits that have been negotiated, for example, include: expanded leave for additional family members, access to benefits while employees are on leave, and the accrual of seniority during the employee's leave. Other benefits relative to leave include: time to attend school conferences; expanded sick leave to care for family members; Personal Time-Off (PTO): time to be taken at short notice and in increments of several hours, expanded definition of family for bereavement leave, and the ability to donate one's leave to someone else.

Another important set of negotiations involves the scheduling of working time: limits on mandatory overtime; notice periods for mandatory overtime; shift allocation and the right to swap shifts between workers. Regarding part-time work a couple of unions, including the San Francisco Newspaper Guild and the CWA, have negotiated a right to gradual return to work after childbirth. There are also agreements on job sharing and pro rata access to benefits for job sharers. Unions also frequently negotiate on pro rata benefits for part-timers although they are often caught in a difficult position when employers pose the cost of benefits for part-timers as the potential loss of a full-time position. It is rare however that unions have successfully negotiated for a reduction in working hours.

All in all this area suffers from a lack of comprehensive research on unions and work family policies; there is one study on the provision of paid maternity leave in large companies but that is already 10 years old. The obstacles to pushing work family issues higher up the policy agenda include the lack of research, and competing union demands such as health care, pension, work safety, and seniority, priorities that may supersede or conflict with work/family issues. Despite strides made in terms of flexible hours, job-sharing, part-time benefits with part-time hours, telecommuting, shift swapping, and voluntarily reduced working time, employers still leave it up to supervisors and employees to discuss how to work out these arrangements, if at all. The challenge is to move work family benefits out of the 'wouldn't it be nice' category into a basic item on the negotiating agenda.

Respondents:

Marley Weiss, University of Maryland Law School, in response pointed to the difference between the 'employment-at-will' tradition of the United States and the more regulated employment relationship in Europe. Under the U.S. system of unitary exclusive collective bargaining unions negotiate (at employer or workplace level but not at sector level) and administer collective agreements and are involved in arbitration (a process which in most European countries is the role of dedicated labor courts) and have a minor law enforcement function; for the majority of workplaces, which are non-union, these functions do not exist. European workplaces tend to be regulated by a stronger and more complex net of legislation, unions and mechanisms for employee representation irrespective of union membership. There are of course some basic federal and state laws regarding working hours and discrimination but this grid is much less defined than in Europe. This difference makes it very difficult to seriously consider transferability of policies. In relation to arbitrations, Weiss pointed out that it is not surprising that grievances in the work-family field are relatively few: it reflects a perennial problem for unions, a tendency among workers to 'work-now-grieve-later'; given the lack of effective remedies employers have an incentive to keep undermining and breaking agreements. On top of this arbitrations by their very nature tend to be arbitrary: there is no binding precedent; each contract is different and in any case is made on a case-by-case basis by individual

arbitrators. Finally Weiss pointed to the European term of ‘flexicurity’ as providing a better term for the need for a trade-off between employer demands for flexible labor use and employee demand for predictability and regularity of income and working time.

Donna Dolan, Communications Workers of America (CWA), stressed how helpful the WorkLife Law Program’s arbitration report had been to drawing attention to work-family issues in the CWA: by focusing on disciplinaries and arbitration it connects to the day-to-day reality of local presidents and representatives. The second commendable issue of the report is its focus on men; it thus reflects the latest findings of the Family and Work Institute’s research, that there has been a significant increase in the number of men who admit to facing work-family conflict. Dolan reported that, to her initial surprise, the overwhelming number of phone calls in response to new agreements related to work-family flexibility have come from male union members. Regarding mandatory overtime and short-term changes in working time schedules: this was the subject of a major strike against Verizon in 2000 when in the end 70,000 workers had to come out for 14 days to get Verizon to agree to limit mandatory overtime.

CWA will shortly begin talks with Verizon on reducing absenteeism: there are a number of studies showing that roughly 40% of absences are accounted for by work-family problems, and this is acknowledged by both management and union, and will undoubtedly play part in the solutions they will put forward. However, the awareness of work-family conflict at senior management levels has not trickled down to all managers and supervisors: compulsory training on workplace flexibility for all managers, as they seem to have introduced in Australia, would be a great step forward. Dolan also commented that greater harmonization of contract language will help with more consistent arbitration approaches but that of course ultimately state or national legislation, such as the California Paid Leave Act, presents the best means of providing standardized and generalized rights for all workers.

Discussion:

- Mandatory overtime: This presents an important part of earnings for many workers: any discussion should acknowledge that not everyone is opposed to working overtime. There also is the danger that management will outsource jobs, on worse conditions, if employees refuse to work mandatory overtime. The Amalgamated Transit Union (ATU) has been successful in limiting ‘out of hours’ obligations for its bus drivers in relation to compulsory alcohol tests: if employees can provide a written notice explaining why they are unable to attend the after-work test, they will be excused from attendance. Nursing unions have successfully challenged mandatory overtime because of the danger to patients of excessive overtime; similarly truck drivers have been limited in the hours they are allowed to drive: the health and safety argument broadens the potential alliances in a fight for a limit on working time.
- How to make arbitrations less arbitrary: There are few formal routes as the arbitration route does not include case law precedent or class action – the system is designed to be ‘pluralistic’. Under these circumstances: greater harmonization in union contracts might be one channel; more discussion, education and awareness among arbitrators another. In the final instance the only way to standardize interpretations is to get a law passed that introduces a new standard.

- Unions and the law: Most grievances are taken at the local level. Test cases are expensive and uncertain for unions and hence are not seen as a general strategy for improving labor rights, however, there are some precedents.
- The FMLA and union contracts: The FMLA has provided the impetus for unions to negotiate for improvements in the basic provisions under the law – it has acted as a floor rather than as the standard in union negotiations.
- Are work-family policies effective for union organizing? There is limited evidence because so far few unions have made this an organizing issue. However in California unions have been visibly at the forefront of getting the California Paid Family Leave Act passed – and have successfully used this in their organizing materials.

Panel IV

“The end of the world as we know it? Businesses, flexibility and the law” was chaired by Jody Heymann, Harvard School of Public Health

Eileen Appelbaum, Rutgers University spoke on **Businesses and the California Paid Leave Act**, and reported on two California surveys on medical and family leave conducted just prior to the California Paid Family Leave Act (CPFLA). She began by outlining the principles of the Act which went into force in July 2004: it provides up to 6 weeks of partially paid leave per annum for bonding with a new child or caring for a seriously ill relative; pay levels are limited to 55% of weekly earnings to a maximum of \$728 weekly in 2004 (thus including middle income employees). It is solely funded by a payroll tax on employees (limited to a maximum of \$63.5 p.a. in 2004). The initial design of the legislation provided for up to 12 weeks leave, jointly funded by employers and employees. When employers withdrew workers agreed to fund six weeks of paid leave with no employer contributions. CPFLA benefits are on top of provisions under California’s State Disability Insurance program which provides partially paid maternity leave for most workers. The law does not include continuation of employee benefits during leave (although other laws might provide this). Efforts to pass similar laws are under way in New Jersey and New York.

The CPFLA will be of particular benefit to lower income workers: many professional and managerial workers already have access to paid leave. The principle of paid family leave was approved by over 80% of Californians, according to a representative survey. Yet that survey also found that awareness of the new rights was limited to one in five of respondents, and was particularly low among low waged workers, groups least likely to have existing paid leave rights from their employers.

The law will be a considerable benefit to those employers already providing paid leave. In 2003 a third of California employers were providing benefits in excess of requirements under the FMLA, mostly larger employers with predominantly professional workforces. The benefits of more generous leave policies are clear in relation to retention: 75.8% of pregnant women returned to their employer in companies with just basic FMLA provisions, compared to 87.7% in companies with enhanced FMLA benefits. The financial benefits of reducing staff turnover and saving on recruitment and retraining costs are by now well documented for all types of industries.

The FMLA is currently under attack for being too complicated or cumbersome for employers. However, in a survey of 263 CA companies less than 1% said that they had experienced problems or abuse of provisions. Appelbaum's research shows that real problems with the abuse of FMLA are generally linked to dysfunctional work environments and managerial problems not really related to the FMLA.

Ariane Hegewisch, American University Washington College of Law, focused on “**The business response to flexible working time rights in the UK and the Netherlands**”. In both countries the employer is under the obligation to positively consider an employee request for reduced or changed hours unless there are business or organizational objections; in the Netherlands the employer decision is subject to external legal challenge, in the UK the right to request is formally limited to parents of pre-school or disabled children and the employer’s decision cannot be challenged as long as a laid-out procedure has been followed in considering the request for change. These rights potentially present a major challenge to traditional employer prerogatives to structure and schedule work yet both Dutch and UK employers have been supportive of the legislation and, in the case of the UK, have called for its extension to all employees with caring responsibilities. Hegewisch suggested that the implementation of these laws provide a great opportunity to find out whether U.S. employers are justified in their often expressed fear that, once there is a general right to flexible work, there will be an unmanageable flood of requests for change. UK and Dutch data suggest that this has not been the case: 15% of Dutch and 10% of UK employees made a request for flexible working practices (in the UK not necessarily under the auspices of the Right to Request), significant numbers but not exactly a flood. The large majority of employers had at least one, but, in the majority of cases, only one request; in the vast majority of cases requests were accepted.

Research about working hour preferences generally suggested a much higher proportion of employees wanting to work fewer hours. This raises the question of why there have not been more requests: questions on working time preferences are often posed without reference to income, and in practice many employees are unable or unwilling to trade off lower earnings for more convenient hours of work. Others fear an adverse career impact. Finally, there is an element of self-censorship: employees will not ask when they believe their job cannot be rearranged with less hours or when they perceive their employer as hostile. This is a particular impediment for people in managerial and professional jobs, and for men across all occupations. It is clear that by itself the right to reduce working hours has not been able to overcome all problems of deskilling and discrimination associated with part-time work or to change hostile employers. That said, the laws have clearly helped some men and a considerable number of women to negotiate better work-life balance. For many women returning to work after childbirth it has lessened the need to change employer in order to find more manageable working hours, at the price of breaking seniority and often moving from the primary into the secondary labor market.

Hegewisch then briefly turned to the German Part-time Law, which provides a similar right to request reduced working hours as in the Netherlands but has led to far fewer requests and generates much greater hostility from employers. She argued that the successful implementations of the laws in the Netherlands and the UK were helped by two factors: tight labor markets and an existing tradition of employee responsive working time flexibility. Under these circumstances the laws helped employers to re-invigorate and generalize existing flexible working policies. Arguably neither of these factors was present in Germany. In the context of the Netherlands and

the UK the positive impact of labor shortages raises the question of how employers' positive response to working time flexibility can be secured in the longer run, across the economic cycle.

Karin Jurczyk, German Youth Institute, made the third contribution on "**Balancing employee and employer needs for short term flexibility: The family responsive workplace in Germany**" Both the reality and the ideal of the German family, with a male bread winner and a stay-at-home mother, are slowly shifting, argued Jurczyk. The discussion of gender inequality and lack of work-family balance has finally moved out of the realm of gender studies; work-family reconciliation has become an accepted public policy goal. The context for this are the dramatic decline in birth rates -- at 1.3 children per woman Germany has one of the lowest birthrates in Europe – at the same time as the baby boomers are preparing for retirement. This demographic imbalance in the population threatens both the growth potential of the German economy and the future viability of its welfare state. A second factor leading to the reconsideration of work-family policies is the rapidly rising divorce rate, and the fact that 20% of families with children are headed by a single parent. Public policy therefore is aimed at increasing women's (and that means: mothers) labor force participation; increasing birth rates; and providing more economic security for women because of the fragility of families.

Labor participation is particularly low for mothers of children under three (particularly in West Germany; childcare provision for young children continues to be much better in East Germany, even after re-unification). Less than 10% of West German mothers with a child under three work full-time, and 70% are not economically active at all, mostly while taking advantage of Germany's 3-year parental leave provisions. While 50% of West German families with pre-school children have a stay-at-home mother, this arrangement is preferred by only 6% of all families. A major reason is the dearth of childcare for young children. Only 3% of children under three have places in regular daycare institutions yet 30% of mothers of young children are economically active and have to rely on informal or private sector provision. Another aspect of the German care-gap is that provision for older children is sufficient but part-time: generally only until noon.

Germany has a very energetic Minister for Family Affairs, Renate Schmidt, who is following a three-pronged strategy: build local and regional alliance of local authorities, employers and unions, to create family friendly communities; improve the legal rights to parental leave and part-time work; and promote best practice examples which demonstrate both the economic advantages and the organizational feasibility of different working arrangements. How have employers reacted? Working time in Germany has changed dramatically during the last two decades; there is a high level of flexibility, but only partially in response to employee demands for non-standard or variable working hours. Such arrangements do not necessarily take account of the specific mix of flexibility and stability needed by parents. Some employers, mostly larger ones, offer a wide range of support for better work-family-balance but they tend to be hostile to binding agreements or legislation on work-family compatibility, preferring voluntary arrangements instead. 75% of employers in a recent survey attached little importance to the issue of work-family policies. The continuous lack of a supportive workplace suggests instead that a legislative framework is important to reinforce work-family balance policies because families cannot build their every day lives on the voluntary performance of companies. What they need is flexibility which can be regulated and controlled by a common negotiating process for employers and employees.

Respondents:

Ellen Ernst Kossek, Michigan State University, acknowledged that demonstrating the business case will be important in any attempt to get national policy changed. But she cautioned against an over-reliance on the business case as an isolated public policy strategy to promote workplace flexibility. Benefits, particularly those that are short term and directly related to the bottom line, are often hard to isolate. Typically, these relate to retaining talent and minimizing training and turnover costs, which may take a time to materialize. Employers moreover tend to define the purpose and benefits of work-family policies in a very narrow manner, for example to help with retention, lower absenteeism, lessen immediate stresses. They do not see this in terms of broader redesign of work, or as related to the more effective use of technology or improved workforce inclusion social policies- not necessarily because of active opposition but because of lack of imagination. There is a need to pose this issue in a broader manner, and include arguments for broader economic growth and business development, for example in relation to childcare as a vehicle for economic development. Finally, Kossek suggested that there is a need to unpack the call for flexibility. There are key labor market differences in the types of flexibility needed. Not all employers face similar recruitment and retention problems, and replacing an employee has financial and substantive differences in various industries and workforces. Different types of individual flexibility may be possible and relevant in an automobile manufacturing environment than in financial services, for example. Approaches to employers need to be industry specific: they need to include concrete examples of what is possible in different occupations. Her and McGill Professor Mary Dean Lee's Sloan funded research on reduced-load work in managerial and professional jobs shows that reduced hours careers are possible, but that arrangements have to be based on employer and employee compromise and benefit. (The second component of the study, on managerial and employer perspectives on reduced-load work, will be available shortly.)

Janet Gornick, CUNY, also critically addressed the focus on the business case for flexibility: such a formulation assumes that finding or providing alternative work arrangements is a private issue, disconnected from broader social policy objectives and social insurance issues related to equality, health, educational outcomes or economic developments. While a business case can be made for providing sick leave, it will be much harder to provide one for subsidized childcare or adequate paid maternity or parental leave: such costs are simply too high for most employers. Additionally not all employers will have recruitment or retention problems to motivate their support for work-family policies. The business case is best employed with employers to make an argument for a change in public policy. In the interest of fairness and social justice one might need to require of employers to carry some of the costs for providing a more family friendly workplace. A thrilling part of this conference is the integration of an individual 'rights' perspective in the public policy arena, a perspective that is usually absent in discussions. One lesson to take away from European policy development is that it includes an active acknowledgement that employers and employees might have different interests, that win-win might not always be possible but that it is necessary to negotiate and develop workable compromises. Finally, one more remark on the controversial topic of Europe. Europe is very diverse, the three countries discussed here: Germany, the Netherlands and the UK, share very gendered and unequal markets. Pointing at the Nordic countries as examples of more egalitarian

societies is often criticized in the United States as supporting social engineering: forcing women to adopt roles they do not want to take. However, what these societies have also done is use social policies to change men's contribution to the family, and fear of a focus on men's roles seems to really be driving the rejection of Scandinavia as a model.

Tuesday, March 22

Panel V

"Pushing the envelope" was moderated by Candace Kovacic-Fleischer.

Julie Mellor, Chair of the UK Equal Opportunities Commission, spoke about **"Increased productivity, reduced hours: litigation and legislation"** in the UK. She began by highlighting main differences between the UK and the U.S. labor markets, and the British EOC compared to the U.S. EEOC. Half of the UK workforce is female, but half of all women work part-time. Unlike the EEOC the EOC only deals with gender discrimination but goes beyond employment to include the provision of goods and services and political representation. Under UK law there is no class action but the EOC is able to conduct formal investigations, not solely enforcement. And the EOC is formally charged with advising the national government on policy and legislation regarding gender discrimination.

One of the EOC's key concerns is part-time work. It has initiated several studies showing that women's skills and prior education are systematically underutilized in part-time jobs. Related to this devaluation of women's skills is continued systematic discrimination during pregnancy: in its recent statutory investigation of pregnancy discrimination 25 years after the passing of the Pregnancy Discrimination Act, half of all pregnant women said they had experienced discrimination at work, and over 1000 women had lodged cases at Employment Tribunals (the lowest level UK labor court). The EOC received more calls to their helpline on this issue than on any other matter. A key issue for mothers returning to work is a reduction in working hours. There are a number of law cases finding that employers indirectly discriminate against a mother when they refuse to adjust her working hours. There also has been a case by a father successfully claiming sex discrimination because he was refused a request for reduced hours which was routinely granted to female employees. Ironically, as fathers become more active in sharing childcare and gender differences in caregiving become less pronounced, this legislative route will become harder to follow.

The EOC is arguing that addressing this systematic underutilization of women's skills could become Britain's competitive edge. The United Kingdom lags behind its competitors in productivity because of structural skill shortages and lower levels of innovation and investment in new technologies. The EOC has initiated studies showing that a proper utilization of women's skills could lead to gains of as much as 3% of GDP. The UK Treasury (the Finance Ministry) has calculated that barriers to women's full labor market participation cost the British economy \$25 to \$38 billion, with the costs of occupational segregation alone (vertical and horizontal) estimated at \$3.8 to 9 billion. The UK has the highest female participation rate in the European Union with the exception of Scandinavia; women's educational attainment is higher than men's. Yet, after 29 years of equal pay regulations, the full-time wage gap is still 20%, and at least double that for part-time workers. It is estimated that 36% of the gender pay gap is accounted for by different working patterns between men and women. Another way of illustrating the human

capital costs of lack of family friendly working practices is that 40% of mothers, 10% of fathers, and 20% of carers have given up or turned down jobs due to caring responsibilities.

Employers continue to expect economy-friendly families instead of family-friendly policies. The demand for change is not limited to parents: increasingly older workers are looking for gradual retirement options, caregivers for elderly relatives need flexibility. Mellor argued that the time is right for a more fundamental rethink of how work is organized, and how work and society interact. She stressed, however, that the family friendly economy is not cost free and cannot solely be financed by individual employers: basic investment is needed in childcare; new working patterns need to be supported by adequate pensions and benefits. Further legislation might be needed on working hours and parental leave but these need to take into account the reality of the workplace and recognize employer concerns. There is scope for win-win arrangements: employers, families and individuals, and society as a whole can benefit but costs as well as benefits need to be shared.

Chai Feldblum, Georgetown University Law School, spoke on “**Politics and attitudes to workplace flexibility in the United States**” and the Sloan supported *Workplace Flexibility 2010* (WF2010) campaign which she heads.

Feldblum began by noting that eight years of the Clinton administration brought some changes, such as the Family and Medical Leave Act (FMLA), but that working culture has not changed. Her goal, and the goal of WF2010, is to create the cultural and policy climate in which new workplace flexibility laws can be introduced.

WF2010 is informed by four different dimensions of flexibility: flexibility in the scheduling of hours; in the number of hours worked; career flexibility over a lifetime; flexibility to deal with emergent needs. She stressed that we must not allow decisions about time to be seen as individual choice issues -- they are individual choices constrained by societal structure. As with disability, it is important to keep in mind the effects of social structure on individual choices by acknowledging problems and making changes. Feldblum cautioned, however, that there needs to be careful consideration of the long-term consequences of policies: in a gendered and unequal world policies might increase gender inequality by enlarging the difference between men and women’s labor market attachment and increasing women’s economic dependence on men.

A campaign needs to know who its main beneficiary is supposed to be: in the case of WF2010, employees are the main constituency. This does not mean ignoring employers perspectives: clearly unless employers can be won over there will be little chance of gaining support for any initiative in this field. However it also has to be acknowledged that this is not simply a ‘win-win’ situation: the aim of the campaign will be to develop new notions of the “common good”, an acknowledgement that benefits (and costs) will go beyond the narrow conception of the bottom line. The aim of the campaign is to move away from narrow workplace focus and embrace the broadest possible constituency, making new alliances for example around public health concerns, education and human capital development and retirement.

WF2010 has learned from the campaign to get the Americans with Disabilities Act passed. This included a sophisticated concept of mutuality: the employer has the right to have a job done well but should show flexibility on the process of getting the job done: there is no right to insist that things continue as they always have been organized.

WF2010 does not envision progress in the near or immediate future. The view is that by 2010 there will be consensus on policy proposals or options to achieve common good between

employee and employer by sharing costs. While the constituency may be clear, there needs to be a conversation on how this will work.

Respondents:

Fred Feinstein, University of Maryland, worked to help get the FMLA passed from 1985 to 1993. Since then, he noted that we seem to be stuck; although we have strong arguments, the prospects for reform are bleak. There are several reasons for this, including the increasing casualization of work. Employers are replacing direct employees with ‘independent contractors’ to shed even the meager responsibilities they face under current legislation. Under such circumstances, litigation comes to the fore and labor lawyers are in danger of being pushed into the enforcement and standard-setting role traditionally held by unions. Without collective bargaining, it is inevitable that issues will have to be addressed through statutes and litigation. The passage of the FMLA holds an important lesson: it took eight years of preparatory work to draft the FMLA and build support for it; it took nine days to get the bill signed into law once President Clinton was inaugurated. It is important to remember that this preparatory process, in conferences and gatherings such as this conference, is crucial. State level and local legislative initiatives are also important preparatory stages.

Jodi Grant, National Partnership of Women & Families, noted that there is reason to be optimistic. The key to creating legislative change on this issue is framing: how do we convince others that change is necessary? The problem in the current climate is that almost any regulation is presented as ‘undue hardship’ on employers and that there are few protections in the workplace: Title VII, the Pregnancy Discrimination Act, the FMLA. Much can be learned from the FMLA; the FMLA applies universally, irrespective of whether the person needing time-off is male or female. There has been a high level of use from men. The same principles of universality are guiding the California Paid Family Leave Act, and the draft bills currently in the works in Washington and New York.

The preparatory work on Senator Kennedy's sick days bill shows how this issue can move beyond traditional labor rights constituencies: support has come from Catholic bishops, support groups related to particular diseases, veterans. The proposal has generated great media responses, and it is clearly an issue that hits home. Even if the bill might not pass now, it is only a matter of time until it will. Health and safety concerns offer another important litigation avenue; most recently punitive damages of \$25 million were awarded against a hotel in Reno in part because its lack of paid sick leave forced employees to come in sick, which then led to the spread of a virus and the infection of hundreds of employees and guests. Senator Kennedy is also pursuing a flexibility law and Senator Alexander is working on rewarding flexible employers.

Grant summarized by suggesting that we need to build and study our campaigns carefully: What arguments are persuasive to employers? How can we include social conservatives? Does the messenger matter? How can we broaden our constituency?

Discussion:

- Seniority and discrimination: Seniority rights constitute important gains for the labor market, particularly in the context of the United States employment-at-will framework. There is a conflict between civil rights and the labor movement on this topic, but one to which solutions are not straight forward.

- States as laboratories for federal legislation: The state level is gaining in importance not least because federal courts are increasingly dominated by conservative appointments. Progress in state legislation has to be the key to developing policy models.
- Is it wise to promote a right to reduce working hours as long as there still is discrimination against part-time jobs? When women become mothers, the lack of feasible working hours often forces them to trade down employers; a right to reduce hours will not overcome all-short comings of part-time work but it might allow women to stay in the primary labor market and maintain seniority and benefits. It is a least-bad rather than the best option. The current UK focus of flexible working rights on parents is an interim strategy: the long term goal is to provide much greater choice and variability of working time to all carers, and all employees.
- Macro and micro barriers to flexible working: In the UK research among opinion leaders shows that the broad argument on the benefits to productivity of family responsive workplaces has been won; the barriers appears to be at the level of the individual supervisor and they appear to be psychological rather than economic. This is the next stage of research: what are the barriers for individual managers and how can they be overcome.
- Drafting new rights for parents: Even if the long term goal is gender equality, laws need to take into account current gender differences or they might end up economically marginalizing women. Swedish research shows that fathers are more likely to take time off when the children are a little older, or that, instead of taking leave, they prefer to rearrange their hours. This might be more effective than the current UK proposal to extend maternity leave to 12 months and allow parents to share the leave: this is seen as cumbersome by employers and as less popular than working time adjustments by parents, especially as men are not taking up leave unless it is paid at a realistic rate.
- Family caregiving rights v. universal rights: the FMLA holds important lessons. When work on the FMLA started in 1985 it would have been possible politically to get a ‘parental leave’ bill passed; but women’s organizations argued very strongly that the law should be for general medical leave, not limited to parenthood (and hence mothers caring for children). The number of men taking up their caring rights attests to the success of this universal approach.
- Part-time work and the labor movement: The labor movement has been ambivalent towards part-time work for a long time; part-time work is seen as undermining good full-time jobs. Clearly employers have often used part-time work as a cost cutting strategy; but the opposition of the labor movement to part-time work might inadvertently have pushed the casualization of part-time work as employers have resorted to sub-contracting and out-sourcing to get around union opposition. Unions are now less hostile to part-time work.
- The feminist movement: has also softened its opposition to part-time work with a recognition that it is important to consider different work-life patterns for women. Part-time work might enable women to maintain labor market attachment; not being in paid employment at all, if that is the alternative, arguably reinforces gender differentials much more. However, evidence from the UK suggests that long term wage penalties for even one year of part-time work are more severe than one year unemployment.

- **Building constituencies for change:** Reduced working hours are tremendously popular with baby boomers as they approach retirement; the constituency for flexible working rights should not be limited to family care.

Panel VI

The concluding panel on “**Exhortation, Litigation, and Regulation: How to Get to the Family Responsive Workplace**” was moderated by **Holly Fechner, Chief Labor Counsel, Senator E. Kennedy (D)**. In her introduction she outlined current labor legislation introduced or supported by Sen. Kennedy: The Healthy Families Act would provide a minimum of seven days of paid sick leave. This may not seem much compared to other countries but would be a huge step forward in the United States. A workplace flexibility bill is under preparation. Another bill would limit mandatory overtime for nurses. This bill was spurred by a 2000 strike at a Massachusetts hospital; Senator Kennedy brought the parties to Washington to settle the dispute and an agreement was reached which allowed nurses refuse overtime. This agreement set the model for other hospitals. While none of these bills is likely to pass in the short-term Sen. Kennedy stresses the need to take a long-term view and keep raising issues and building social and cultural support for change.

There are other current trends that are important to consider. Taking away minimum labor standards is a cause for concern. Our current political climate is one that is anti-worker and anti-family. Unionization is falling, and when the number of unionized workers falls, the pressure to enforce labor standards eases. These factors are affecting the minimum wage, which has been the same for eight years, efforts to take away overtime rights, to limit the FMLA and is influencing approaches to work-family issues..

Ellen Galinsky, Families and Work Institute (FWI), said that she was encouraged by the general agreement at this conference on a number of issues, including the needs for flexibility in the workplace across sectors, the understanding that flexibility is not genuine flexibility unless it works for both employees and employers and employees are not jeopardized for using flexibility, the increasing awareness that flexibility is an issue of social rather than solely individual concern and that the framing of the issue as one of personal choice is particularly harmful. At this conference, we also seem to agree that a solution has many components: legal, legislative, union policies and, perhaps not discussed sufficiently, personal requests for workplace change. From a strategic communication perspective however there are considerable hurdles to be overcome. A recent poll of working mothers conducted by FWI found that most working mothers believe that they do have choices on their working time, and that their choices carry no negative consequences. Another barrier is the framing of the issue as one concerning primarily mothers and children, and this is then caught in the public ambivalence toward working mothers, an ambivalence shared even by 40% of working parents, and continued negative attitudes toward ‘other people’s children’ (although in the latest poll there is a shift towards seeing children not just as a personal private choice but also as a public asset and responsibility). However, problems faced by low-income working families still are mainly seen as personal failures and lack of organization.

In order to create a broad consensus, the FWI is framing this issue as ‘work is not working’, neither for employers or employees; this interpretation is supported by two representative national studies, of employers and of employees. These show:

- 2 in 5 people are not engaged with their jobs
- 39% are not satisfied with their jobs
- 38% intent to look for a new job
- 1 in 3 show symptoms of clinical depression
- 1 in 3 feel chronically overworked

Another finding from FWI nationally representative studies is a drop in the number of people who want to advance- across all population groups: people stay in the labor market and work as hard if not harder than before but simply do not want to take on more responsibility; this we see as the real “opt-out revolution”. For college educated women there has been a drop from 57% to 36% saying they are not seeking advancement- this is akin to the skill underutilization of concern to UK policy makers. The way work is organized no longer works: there are too many interruptions, too many expectations of multi-tasking, no clear boundaries between work and non-work. A recent financial services case study conducted by FWI on retention/ ‘regretted leavers’ identified a large number of both women and men who were on the edge of leaving the company because of working patterns. It was possible to convince the senior management sponsors of the study of the need for a systematic review of talent management in the organization; HR professionals were much harder to convince that these problems go beyond the need for ‘quick fixes’.

There is much evidence that flexibility is important to employees, particularly to working mothers, of course, but there also has been a sea-change regarding men. Generation X men tend to be more family focused than fathers from the baby boomer generation and spend significantly more time on family work. The literature on employee commitment and the effective workplace stresses a number of factors: the perception that one’s work is of value; respect; the ability to learn and develop; autonomy; supportive supervisors and co-workers. FWI research suggests that workplace flexibility needs to be added to this list. Galinsky ended on an optimistic note: her work with chambers of commerce across the country suggests a new openness and high level of interest from employers in finding solutions and moving toward an ‘effective workplace’ that includes flexibility.

Leslie Silverman, EEOC Commissioner, began by highlighting what the EEOC can - and cannot - do. The Department of Labor, not the EEOC, is responsible for the administration of all wage and hours laws, overtime regulations, FMLA, and it contains the Office of Federal Contract Compliance Programs (which administers affirmative action for government contractors). The EEOC enforces the Equal Pay Act, Americans with Disabilities Act, Age Discrimination in Employment Act, and Title VII (including the Pregnancy Discrimination Act (PDA)). Most people in the United States think of the EEOC in terms of race discrimination yet the very first case the EEOC ever took was one of sex discrimination, challenging the marriage bar. When the EEOC started in 1965, it took in 6,000 charges of discrimination per annum, today that has grown to 80,000. One alarming trend during the last decade has been the steady rise in pregnancy discrimination cases, with 4,500 charges filed last year. Of the 378 law cases the EEOC brought itself last year, 24 cases were related to pregnancy discrimination, a much higher percentage than brought in previous years. The problem with the PDA of course is that protection ends when a woman returns to work. The EEOC currently is bringing a case where a

female doctor, who had three children between 1996 and 2000 and always returned to work full-time after her maternity leave, was offered partnership in her practice at substantially less favorable terms than colleagues. When she complained, and because she refused to guarantee that she would not have any more children, the offer was withdrawn and she was demoted. The EEOC is very interested in pursuing maternal wall cases; Silverman hopes that unions and other organizations aware of potential cases will bring these to the Commissioners' attention: with 80,000 charges considered by EEOC offices each year, it is helpful to point to cases which are of particular potential relevance to developing the law.

How far can the EEOC play a 'promotional' role? The EEOC is in the process of updating its official guidance on sex discrimination and this is likely to include reference to work life balance issues. Such training will also help EEOC field investigators to identify caregiver or maternal wall cases. The EEOC research office can highlight practices that need attention and might be able to do more research on part-time and maternal wall issues. The EEOC has several public forums with employers, and Commissioner Silverman is planning a National Forum on 'opportunities and realities for women in the 21st Century'. The EEOC has recently created a "Freedom to Compete" Award which was initiated by EEOC Chair Cari Dominguez to publicize best practice. And finally the EEOC is setting up an internal taskforce on the most effective means for addressing systemic workforce discrimination.

Regarding legislative change, Commissioner Silverman does not feel it is appropriate to comment. However, generally Commissioner Silverman cast doubt on the helpfulness of comparing U.S. anti-discrimination laws with possibly more far reaching legislation elsewhere. The context in the U.S. is different not least because the employment environment is much more litigious and damage awards against employers tend to be much more substantial than in Europe. Under those circumstances employers are understandably weary of any new legislation. The best and possibly the only way forward is to convince the business community that new legislative approaches are workable. However there does seem to be some scope for soft law approaches, as part getting the conversation going.

Robert Molofsky, General Counsel, Amalgamated Transit Union (ATU), began by noting that the conference had been a tremendous catalyst in his union for addressing issues which perhaps in many other unions are already more established. In preparation for this conference he conducted a survey at their Annual Legislative Conference among 70 local union presidents which confirmed the findings of the WLL Arbitration report: work and family conflict is present, is not disappearing and if anything is rising. The most important aspect of this issue is emergency leave, and interpretations regarding the applicability of the FMLA. Another problem is chronic absenteeism, though he cautioned against assuming that this is primarily linked to work-family conflict: much of it has to do with the stresses of work in his particular industry. But once absenteeism is perceived as pervasive by supervisors their response to requests for family leave or family related absences tends to become more hostile which is then reflected in the fact patterns presented in disciplinaries and arbitrations.

How to advance the family responsive workplace: convincing employers of the benefits of change is key. For the ATU this discussion takes place against the background of outsourcing: ATU must convince employers that \$5 per hour, paid to part-time workers in subcontractor companies, is more expensive than \$10 p.h. with benefits. ATU has been helped in this argument by the increasing introduction of new technology into service sector jobs. This makes work more complicated, and requires a properly trained workforce; low wage policies

lead to chronic labor turnover and hence skyrocketing training costs. ATU has been fairly successful in making this argument for the maintenance area and increasingly for front line jobs. Standards on drug and alcohol testing, licensing requirements, security related background checks were first viewed with suspicion by union members but have helped by making it harder for low wage subcontractors to recruit qualified staff. Regarding the issue of part-time work: Molofsky feels that the positive emphasis on part-time work perhaps draws too much on professional jobs, and not enough on the reality of blue collar industries. The move towards part-time jobs is often part of undermining good full-time jobs with benefits, and does not have the support of members. For unions there is the added problem that part-timers tend to be less involved in unions than full-time workers. But the union has been arguing with its members for the need to negotiate benefits for part-time workers, not least to make this less of a cost-cutting option. Yet it has to be recognized that this is not a straight forward issue, and forcing employers to extend healthcare benefits might threaten benefits for full-timers. In general the way ahead on work family policies, as it has been with the FMLA, is to build coalitions with the union movement, to increase awareness of the need for change, and pre-empt more general regulation by negotiating work family clauses in union contracts.

Tess Gill, Barrister, United Kingdom, drew on her 30 years of experience as a solicitor, a union negotiator, a union women's rights officer and barrister and argued that flexible working hours need firm foundations, without leave rights, maternity rights and some regulation of working hours it will be very hard to negotiate for flexibility. Until the mid or even late 1980s UK unions too were very suspicious of part-time work and did not really see it as 'real work'. It took time for these attitudes to change. But the need to recruit women, and the rapid increase of part-time work, and of female labor force participation, has made unions focus more on part-timers and since the 1980s trade unions have been at the forefront of part-time worker equal rights issues regarding equal pay and equal access to sick leave, pensions or other benefits such as preferential loans. Over the years big progress has been made and the principle of equal treatment for part-timers at least has been won.

Rights to flexible work only make sense if there is protection against discrimination for workers on non-standard contracts, including part-time contracts. Partly perhaps because of the increased willingness to address discrimination there is in the UK too an increased move towards sub-contracting and outsourcing. A recent case involved a university which dismissed junior lecturers and offered them re-employment through an agency on worse terms and conditions and -most importantly- without access to the university's pension scheme. The dismissal has been found to be discriminatory by European Court of Justice. There are now attempts in the EU to give agency workers rights to compare themselves to employees in the companies where they are placed. Another way of preventing employers from using sub-contracting as a means of avoiding employer responsibilities is to attach rights to the worker, independent of employment status.

Looking at the definition of indirect discrimination here and in the EU and the UK it is not clear why it appears to be so much harder to win disparate impact cases in the United States: the major difference appears to be the willingness of the judges to critically evaluate employers' objective justifications for a practice. UK and European judges have required employers to show that their response is 'proportionate' to the objective facts (in the case of pay differentials for example), and to prove that there is not a less discriminatory practice which could also fulfill employer requirements. Such an approach is almost akin to the ADA requirement for 'reasonable accommodation'.

Where to go from here? Several encouraging common themes have emerged: focus on caregiver discrimination (and the Australian example is most heartening); the exploration of ‘reasonable adjustment’ from disability legislation; the need to combat casualization, perhaps by attaching rights to workers, not employees.

Discussion:

- How to raise work family issues in more traditional male unions: A work family survey at union legislative conferences is a great idea for putting this issue on the agenda. The CWA has used a similar strategy in raising awareness in local unions with mostly male leadership: it contracted Ellen Galinsky in the early 1990s to conduct a worklife survey and used this to raise discussion; the number one issue raised in focus groups was increased flexibility, and sub-committees were then tasked to develop this into a negotiating agenda. The CWA has had joint management-union negotiating committees on work family policy since 1989 and these tend to be much less conflictual than other negotiating committees because management too recognizes work family problems.
- Negotiating part-time arrangements: CWA had an agreement for a year’s unpaid maternity leave; members said that instead they would like to come back to work on a gradual basis. There now is a regional contract covering 37.000 workers which gives returning mothers the right to chose the number of hours they would like to work during first year. It is likely that this contract would not have been supported if it had been framed this as a right to part-time work instead of a “reduced time schedule”.
- Developing flexible working rights: In terms of pursuing change there is the federal level, the state level but last not least the voluntary and individual workplace level: even in non-unionized workplaces there might be scope for employee management committees investigating better solutions. There are many pieces in terms of workplace rights and it is important to remember that workplace flexibility is just one, but even if it is only one component, and more akin to the roof than the foundations, it also needs explicit attention.
- Flexibility and the long hours culture: It is important not to narrowly define flexibility as a right to part-time work: the long hours culture also has to be addressed, especially for people in top jobs and in low paid jobs. 80% of college educated workers say they would like to work less hours. If full-time work did not mean all-the-time work there would be less demand for part-time work. Capping of overtime should be part of a campaign. In countries with lower working hours, demand from working mothers for part-time work is much lower than in those with long working hours.
- Changing the political climate: Both in Australia and the UK, for now at least, the policy debate on flexibility is no longer cast in terms of individual v. employer rights but in terms of societal investment. Yet this is quite a recent development in both countries: we should look in greater detail at the arguments and societal processes that have led to this shift.

Concluding remarks by Joan Williams: Joan Williams thanked all participants for a most stimulating discussion. She hoped that others too had found the conference helpful in considering strategies for challenging the traditional organization of work, time and caregiving. It is clear that there is a lack of basic rights in relation to working time and flexibility. But as long as the notion of the ideal worker - working full-time, all the time and without interruptions - is not challenged

and dismantled, anyone taking up flexible working rights is in danger of being stigmatized as ‘not ideal’. Challenging the stigma attached to flexibility is key to turning policies into reality.

The aims of the WorkLife Law Annual Working Time Conferences are to facilitate new conversations about work-life issues. We are hopeful to continue this process next year.

About the Participants

Eileen Appelbaum is a professor in the School of Management and Labor Relations and Director of the Center for Women and Work at Rutgers University. Prior to this, she was Research Director at the Economic Policy Institute in Washington, DC and Professor of Economics at Temple University. Most recently she co-edited *Low Wage America: How Employers Are Reshaping Opportunity in the Workplace* (2003). Her current research focuses on work-family policies and paid family leave.

Heather Boushey is an economist at the Center for Economic Policy Research, DC. Prior to joining the CEPR she worked at the Economic Policy Institute. Her research focuses on labor markets and work family issues, particularly as they effect low waged women workers.

Juliet Bourke is a lawyer specializing in discrimination law. She is a Partner with Aequus Partners and a legal tribunal member (in which capacity she hears employment cases). At Aequus Partners Juliet works with leading organizations to improve diversity and equity outcomes through organizational change, training and investigations. Whilst previously working for the (Australian) NSW Government she was tasked with developing legislation to protect workers with caring responsibilities from discrimination.

Nancy Buermeyer is a principal at The Raben Group, LLC where she brings over fifteen years of policy, political and advocacy experience on issues ranging from employment discrimination and lesbian and gay civil rights, to health care and women’s rights.

Carin Clauss is Nathan P. Feisinger Professor of Labor Law at the University of Wisconsin Law School. Her areas of specialization are labor and employment law, administrative law and civil procedure. As U.S. Solicitor of Labor from 1977 to 1981, Ms. Clauss was responsible for enforcing the nation's labor laws.

Donna Dolan is the Communications Workers of America Director of Work/Family Issues. She is the Union partner in the joint labor/management partnership on Work / Family that CWA negotiated with Verizon in the late 80's. She is jointly responsible for all work/family programs and the functioning of the labor/management policy – making work/family committees.

Antoinette Eates is a senior attorney advisor to Commissioner Stuart J. Ishimaru at the U.S. Equal Employment Opportunity Commission where she works on policy and enforcement issues related to the anti-discrimination laws enforced by the EEOC. Antoinette was previously an attorney in the office of EEOC Commissioner Paul Steven Miller, an administrative judge at the EEOC, and an attorney with a disability rights protection and advocacy organization in upstate New York.

Jodie Levin-Epstein **Jodie Levin-Epstein** is deputy director of the Center for Law and Social Policy (CLASP) which focuses on the needs of low-wage working families and those out of work. In 2004 she was Ian Axford Public Policy Fellow in New Zealand where she examined how New Zealand's experience with paid parental leave and paid sick leave offered lessons for the U.S.

Holly Fechner is Chief Labor Counsel for the Senate Health, Education, Labor & Pensions Committee. She is the primary adviser to Senator Edward M. Kennedy and Senate Democrats on the economy, labor, employment, work-family, civil rights and pension policy. Prior to her current job, Holly was legislative counsel for the AFL-CIO, a labor lawyer in private practice, and policy counsel for the National Partnership for Women and Families.

Chai Feldblum is a Professor of Law at Georgetown University Law School, Director of the Federal Legislation Clinic, and Director of Workplace Flexibility 2010. Professor Feldblum began focusing on workplace flexibility issues in 2002. Professor Feldblum continues to engage in scholarly work and practical advocacy in the areas of disability rights, lesbian and gay rights, and health and social welfare legislation.

Fred Feinstein former General Counsel of the National Labor Relations Board, is a Visiting Professor and Senior Fellow in the Office of Executive Programs of the University of Maryland School of Public Affairs.

Netsy Firestein is the founder and Director of the Labor Project for Working Families, a national organization devoted to labor and work/family issues. Ms. Firestein has over 20 years experience in this area. She has worked with many local and International unions and labor/management committees to develop work/family contract language and programs. Ms. Firestein trains unions and union members across the country and is the co-author of numerous articles on these issues.

Cynthia Fuchs Epstein Cynthia Fuchs Epstein is Distinguished Professor at the Graduate School, City University of New York. She is President-Elect of the American Sociological Association. She is the author of numerous books and articles on women in the law. Her most recent books are "Fighting for Time; Shifting Boundaries of Work and Social

Life" (co-edited with Arne Kalleberg); and "The Part-time Paradox: Time Norms, Professional Life, Family and Gender."

Ellen Galinsky is President and Co-Founder of Families and Work Institute (www.familiesandwork.org), a Manhattan-based non-profit organization conducting research on the changing family, changing workforce and changing community. In 2003, Galinsky co-authored *The National Study of the Changing Workforce*, FWI's major, nationally representative study of the U.S. workforce, updated every five years.

Tess Gill is a UK barrister specialising in discrimination law and equal pay. She appears as advocate before employment tribunals and appellate courts including the European Court of Justice, in many trade union backed cases and cases supported by the Equal Opportunities Commission and other statutory commissions. She is also a part-time employment tribunal chairman and was previously a trade union legal officer and trade union official. She has published books on women's rights and employment law including co-authorship of Discrimination law Handbook, (Legal Action Group 2002).

Lonnie Golden is Associate Professor of Economics and Labor Studies-Industrial Relations at Penn State University, Abington College. He is co-editor of the book, *Working Time: International Trends, Theory and Policy*. His current research focuses on trends, policy and theory regarding work scheduling, labor flexibility, behavioral labor supply, mandatory overtime work, overwork and the non-standard work force.

Janet C. Gornick is Associate Professor of Political Science at the City University of New York. Her research focuses on family policy and working time regulations, across countries. She is co-author of *Families That Work: Policies for Reconciling Parenthood and Employment* (Russell Sage Foundation 2003). Supported by a new grant from the Sloan Foundation, she is just beginning a two-year study of working time regulations, work hours, time use at home, and income, in eight countries. The study will focus on two demographic groups: parents and older workers.

Jodi Grant is the Director of Work and Family Programs and Public Policy for the National Partnership for Women & Families. In that position, she advocates for the interests of American women and families in identifying and looking to expand family friendly and work/life programs in both the private and public sector.

Christine Haight Farley is Associate Professor of Law at American University Washington College of Law.

Mary Hardiman Mary G. Hardiman is Director of Education for the International Brotherhood of Teamsters in Washington, D.C. Her Department and its staff of fifteen run more than 125 field programs each year for union activists, stewards, officers, agents and staff throughout the U.S. and Canada.

Heidi Hartmann is the director of the Washington-based Institute for Women's Policy Research, a scientific research organization on policy issues of importance to women, which she founded in

1987. Dr. Hartmann is the Chair of the National Council of Women's Organizations Task Force on Women and Social Security.

Ariane Hegewisch is visiting fellow at the WorkLife Law Program at American University Washington College of Law. Prior to that she was a lecturer on European Human Resource Management at Cranfield University School of Management in the UK, after working as a policy advisor for UK local government on gender and employment issues. She was a co-founder and executive board member of the UK Pay Equity Campaign.

Jody Heymann M.D, Ph.D., is founder and director of the Project on Global Working Families. An Associate Professor at the Harvard School of Public Health and Harvard Medical School, Heymann is founding chair of the Initiative on Work, Family, and Democracy. She is the Director of Policy at the Harvard Center for Society and Health.

Kyle Hicks is Labor Counsel for the majority on the Senate Committee on Health, Education, Labor and Pensions, chaired by Senator Mike Enzi of Wyoming. She has worked in the Senate since 2001 and worked previously in the House of Representatives. She earned her B.A. from the University of Colorado and her J.D. from the George Washington University Law School.

Stuart Ishimaru is a Commissioner of the U.S. Equal Employment Opportunity Commission (EEOC), which is the government agency responsible for enforcing laws prohibiting discrimination in employment. Mr. Ishimaru previously served as Deputy Assistant Attorney General in the Civil Rights Division of the U.S. Department of Justice and as counsel to the Subcommittee on Civil and Constitutional Rights and two Armed Services Subcommittees of the U.S. House of Representatives.

Margarate E. Johnson is a Practitioner-in-Residence and Director of the Domestic Violence Clinic at the Washington College of Law, American University. She also teaches the Sex-Based Discrimination course. She is currently working on research regarding sexual harassment in employment and issues of gender stereotyping. Prior to teaching, she represented employees in employment discrimination litigation while working at the Washington Lawyers' Committee for Civil Rights and Urban Affairs and Kalijarvi, Chuzy & Newman.

Amy Joyce is a Washington Post staff writer with a weekly column on Life at Work.

Carol Joyner is the Executive Director of the 1199/Employer Child Care Fund, a benefit fund negotiated in 1989 by the 1199 Health and Human Service Employees Union and New York Health Care Employers. As founding director her work focuses on program planning and development, labor/management collaborations, administering work/family initiatives for health care workers and education policy issues.

Karin Jurczyk is director of research on 'Family and Family Policies' at the German Youth Institute (Deutsches Jugendinstitut e.V.). Her research focuses on the balance of work and family life, family friendly working time and the gendered division of labor. She is permanent host of the commission of the 7th family report of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and member of the COST Action 19 "Children's Welfare".

Ellen Ernst Kossek (Ph.D. Yale), is Professor of Organizational Behavior at Michigan State University's School of Labor and Industrial Relations. She was elected Fellow of American Psychological Association and SIOP for her research on employer support of work and family, and to the Academy of Management's Board of Governors. Recent research includes co-editing *Work and Life Integration: Organizational, Cultural and Individual Perspectives* (LEA Press: 2005) and an Alfred P. Sloan Foundation study on new work forms <http://flex-work.lir.msu.edu/>

Candace Kovacik-Fleischer is Professor of Law at American University Washington College of Law.

Horstpeter Kreppel is presiding judge at the Frankfurt Labor Court (Germany). From 2001 to 2005, and from 1993 to 1996, he worked for the Legal Service of the European Commission as a national expert, supporting more than 80 cases before the European Court of Justice. He is an expert on European labor and social law and has lectured widely at university level, to trade unions, NGOs and judges. He is a member of the "netlex"-project" of the European Trade Union Confederation. From 1996 till 2001 he was social affairs counselor at the German Embassy in Madrid/Spain

Jean Flatley McGuire, PhD is the Lorraine Snell Visiting Professor at the Institute on Urban Health Research at Northeastern University's Bouve College of Health Sciences. She has worked in the field of public health for 25 years. Dr. McGuire has broad management expertise in both public and private settings and has done extensive organizational development and personnel and other management consulting. Dr. McGuire's current teaching and research work focuses on structural, political, and resource challenges in U.S. public health management, HIV and STD prevention and treatment, HIV and other health services development in South Africa, and work place flexibility. She also works as the Policy Researcher for the Alfred P.Sloan Foundation's Workplace Flexibility 2010 project funded through Georgetown University Law Center.

Sharon Perley Masling job-shares the position of Legislative Counsel for Workplace Flexibility 2010, where she reviews the legal and practical implementation of laws affecting workplace flexibility. Masling communicates with lawyers, academics, policy makers, business representatives and family advocates to seek out their perspective and expertise on these laws.

Masling previously served as Director of Legal Services for the National Association of Protection and Advocacy Systems, as Counsel to Senator Tom Harkin, and as a Trial Attorney for the U.S. Department of Justice's Civil Rights Division.

Michael Mersmann is the labor attaché of the German Embassy, Washington DC. He joined the IG BCE (the Mining, Chemical and Energy Industrial Trade Union) in 1982 where he has held various positions, most recently as the chair of the chemical industry group and as a member of the supervisory boards of Novartis and Veba. He was trained as a fitter.

Julie Mellor has been the Chair of the British Equal Opportunities Commission (EOC) since 1999. She has more than 20 years experience in business and in the public sector, having worked for British Gas, TSB, Shell and in local government. She is a board member of the National

Consumer Council and the Employers' Forum on Disability. She also sits on the Advertising Advisory Committee of the Independent Television Commission.

Robert Molofsky is Senior Labor Counsel for the Amalgamated Transit Union (ATU).

Stefanie Nesmith is program manager at the Washington DC office of the Friedrich Ebert Foundation. She is an economist by education.

Donna Norton is a lawyer and consultant focusing on work/family issues. In her capacity of Director of the National Workplace Resource Center on Domestic Violence, she worked with numerous national companies, unions, policymakers, advocacy groups and the media to change workplace policies on domestic violence.

Mona Papillon is Special Assistant and Legal Advisor to Commissioner Stuart J. Ishimaru at the U.S. Equal Employment Opportunity Commission. Prior to working with Commissioner Ishimaru, she worked for former Commissioner Paul Steven Miller and as Senior Attorney for the Office of Legal Counsel.

Judith Scott has, since 1997, served as General Counsel for the Service Employees International Union (SEIU), the fastest growing and largest union in the AFL-CIO, with approximately 1.8 million members. Ms. Scott also is a partner in the Washington, D.C. labor law firm of James and Hoffman. During her 30 years' practice, Ms. Scott has held important legal positions with both industrial and public sector unions, including General Counsel to the International Brotherhood of Teamsters and in-house legal counsel for the United Mine Workers of America and the United Auto Workers Union. Ms. Scott also has been active in working women's issues, including her tenure as a board member of the National Partnership for Women and Families. She is co-author of Organizing and the Law, a widely-used labor law manual for union organizers

Leslie Silverman is a Commissioner for the U.S. Equal Employment Opportunity Commission. Prior to her 2002 appointment to the EEOC, she served for five years as Labor Counsel to the Senate Health, Education, Labor and Pensions Committee. Prior to that, Ms. Silverman practiced litigation and employment law at a private firm and clerked for U.S. Attorneys Office for the District of Columbia and the Antitrust Division of the Department of Justice.

Mary Still is program director and faculty fellow at the Program on WorkLife Law, American University Washington College of Law. Before joining the Program in the fall of 2003, she was an Alfred P. Sloan pre-doctoral fellow at the Cornell Couples & Careers Institute for five years. Still, a former award-winning newspaper reporter, researches organizational change, gender in the workplace, social networks, and innovation.

Pamela Stone is Associate Professor of Sociology at Hunter College and The Graduate Center of the City University of New York. Her research focuses on gender inequality in employment, including such topics as job segregation, pay equity, living wage reform, and work and family issues. She is currently completing a book (forthcoming, University of California Press) based on her study of career interruption among women professionals.

Sharyn Tejani Sharyn Tejani is Special Assistant and Legal Advisor to Commissioner Stuart J. Ishimaru at the U.S. Equal Employment Opportunity Commission. Prior to working at the EEOC she was Legal Director at the Feminist Majority Foundation and worked at the Civil Rights Division at the Department of Justice.

Catherine Trafton is an associate general counsel for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Prior to coming on staff for the UAW in 2000, she was the AFL-CIO Legal Department Fellow. Her areas of practice include traditional labor law before the National Labor Relations Board, health and safety, and federal appellate court litigation.

Michelle Travis is an Associate Professor of Law at the University of San Francisco School of Law. Her scholarship focuses on disability and sex discrimination in the workplace, most recently on teleworking. She received her J.D. from Stanford Law School in 1994 and her B.A. from Cornell University in 1991.

Shelley Waters Boots is the Policy Research Director of the New America Foundation's Work and Family Program. Prior to joining New America, she served as the Director of the Child Care and Development Division at the Children's Defense Fund (CDF) in Washington, DC.

Marley Weiss is Professor of Law at the University of Maryland School of Law. Her research and teaching specialties include all aspects of U.S. domestic, international, and comparative labor law, employment law, and employment discrimination law. She also has taught at Eötvös Loránd University in Budapest, Hungary, and in the Summer University Program at Central European University. From 1974-1984, she was Assistant and later Associate General Counsel of the International Union, UAW.

Joan Williams is Professor of Law at American University Washington College of Law where she founded the WorkLife Law Program. She is known for her work on women and economics and work/family issues. She has published widely, including the award winning '*Unbending gender: Why work and family conflict and what to do about it*' (Oxford University Press 1999).