

## **Anne Marie Lofaso**

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### **ACADEMIC APPOINTMENTS**

**West Virginia University College of Law**, Morgantown, WV

**Associate Professor**, January 2007-present

Courses: Employment Law; Labor Law; Advanced Labor Law; Comparative and International Labor & Employment Law Seminar; Law & Socioeconomics Seminar

Faculty Advisor: Moot Court Board; Labor Law Society; Jewish Law Student Association; Women's Law Caucus; ABA L&E Trial Advocacy Competition; ACS for Law and Policy

Faculty Mentor/Coach: WVU Moot Court National Team, 2008; WVU Moot Court Team (New York Law School Wagner Labor & Employment Law Moot Court Competition), 2007, 2009; Law Review Student Note Advisor, 2007-present; First Year Peer Group Mentor, 2007-present

Committee Assignments: Academic and Strategic Planning, 2007-present;  
Faculty Appointments, 2008-present

**American University, Washington College of Law**, Washington, D.C.

**Adjunct Associate Professor**, August 2001- December 2006

Courses: Comparative & International Labor & Employment Law; Appellate Advocacy

**Oxford University, St. Hugh's College**, Oxford, England

**Lecturer**, Hilary Term 1996

Tutorials: British Labor, Employment, & Anti-Discrimination Law

### **EDUCATION**

**University of Oxford**, Oxford, England

**D.Phil., Law**, March 1997

Fulbright Scholar

Franklin B. Gowen Memorial Fellowship

Thesis: *British and American Legal Responses to the Problem of Collective Redundancies*

Supervisor: Professor Sandra Fredman

Somerville College Intramural Rowing Team

**University of Pennsylvania Law School**, Philadelphia, PA

**J.D.**, May 1991

The Herman Lazarus Prize for best student paper in comparative labor or employment law

Robert H. Jackson Award for best student writing on an international or comparative law topic (national competition awarded by Georgetown Law Center)

Research Assistant, Prof. Clyde Summers (labor and employment law)

Associate Editor, Comparative Labor Law Journal

Regional Administrator, Jessup International Law Moot Court Competition

## **EDUCATION--CONTINUED**

**Harvard University**, Cambridge, MA

**A.B., History and Science, *Magna Cum Laude***, June 1987

Katelborn Scholar, 1983

Harvard College Scholar, 1983-87

Elizabeth Cary Agassiz Scholarship, 1983-87

Harvard Women's Varsity Swim Team, Diver, 1984-86

## **CLERKSHIP**

**The Honorable James L. Oakes, U.S. Court of Appeals for the Second Circuit**

**Law Clerk**, July 1993-August 1994 (during leave of absence from Oxford)

Performance award for outstanding service, 1994

## **SELECTED SCHOLARLY PUBLICATIONS**

*An Open Letter to President Barack Obama and the New Congress: Labor Lessons from Taft-Hartley, the Supreme Court, and the Bush Board*, 62 Maine L. Rev. \_\_\_\_ (forthcoming 2010) (title subject to change)

*Reflections of a Former Athlete as a Young Woman: Growing up under Title IX* in REVERSING FIELD: EXAMINING COMMERCIALIZATION, LABOR, GENDER, AND RACE IN 21ST CENTURY SPORTS LAW (West Virginia University Press forthcoming 2009)

*The Appellate Court's Role in the Federal Judicial System*, in A PRACTITIONER'S GUIDE TO APPELLATE ADVOCACY (American Bar Association publication forthcoming 2009)

RELIGION IN THE PUBLIC SCHOOLS: A ROADMAP FOR AVOIDING LAWSUITS AND RESPECTING PARENTS' LEGAL RIGHTS (Americans United for the Separation of Church and State forthcoming 2009)

*Approaching Coal Mine Safety from a Comparative Law and Interdisciplinary Perspective*, 111 W.V. L. REV. 1 (2008), available at

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=993830](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=993830)

*September Massacre: The Latest Battle in the War on Workers' Rights Under the National Labor Relations Act* (ACS paper distributed May 14, 2008), available at

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1133607](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133607); reprinted in A FRESH START FOR A NEW ADMINISTRATION: REFORMING LAW AND JUSTICE POLICIES (ACS 2008)

*Toward a Foundational Theory of Workers' Rights: The Autonomous Dignified Worker*, 76 U.M.K.C. L. REV. 1 (2007), available at

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=975040](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=975040)

*Does Changing the Definition of Science Solve the Establishment Clause Problem of Teaching Intelligent Design as Science in Public Schools: Doing an End-run Around the Constitution*, 4 PIERCE L. REV. 219 (2006), available at

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=890083](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=890083)

*Pre-termination Job Rights of British Workers Affected by Collective Redundancies*, [1996] YEARBOOK OF EUROPEAN LAW 277 (Clarendon Press, Oxford University Press, 1997)

*Pregnancy and Parental Care Policies in the European Community and the United States: What Do They Tell Us About Underlying Societal Values?* 12 COMP. LAB. L.J. 458 (1991)

## **SELECTED SCHOLARLY PUBLICATIONS—CONTINUED**

*America's Reception to Darwin's Theory of Evolution by Natural Selection*, SYNTHESIS, THE UNDERGRADUATE JOURNAL IN THE HISTORY AND PHILOSOPHY OF SCIENCE (ceased with v. 6, no. 3 (summer 1987) (published 1986)

## **OTHER PUBLICATIONS AND POLICY PAPERS**

A PRACTITIONER'S GUIDE TO APPELLATE ADVOCACY (Editor-in-Chief) (American Bar Association publication forthcoming 2009) (20-chapter book)

REVERSING FIELD: EXAMINING COMMERCIALIZATION, LABOR, GENDER, AND RACE IN 21ST CENTURY SPORTS LAW (eds. andré cummings and Anne Marie Lofaso) (West Virginia University Press forthcoming 2009)

Senior Editor, Keller & Darby, International Labor & Employment Laws, Vols. IIA, IIB, Third Edition (BNA Books 2008); Vol. II, Second Edition, 2006 Cumulative Supplement (2006)

Contributing Editor, Hardin & Higgins, Developing Labor Law, Fifth Edition (BNA Books, 2006) & subsequent supplements (2007, 2008)

*The Constitutional Debate over Teaching Intelligent Design as Science in Public Schools*, December 2005, available at [http://www.acslaw.org/pdf/Intelligent\\_Design\\_White\\_Paper.pdf](http://www.acslaw.org/pdf/Intelligent_Design_White_Paper.pdf)

*Bush Appointee Strikes down Dover ID Policy as Unconstitutional*, December 21, 2005, available at <http://www.acsblog.org/cat-guest-bloggers.html>

## **WORKS IN PROGRESS/FORTHCOMING WORKS**

*Workplace Dissent, Democracy, and Justice* (working title, work in progress)

## **ACADEMIC LECTURES AND PRESENTATIONS**

*Relevance of the New Deal's Wagner Act for Resolving Today's Job-Security Crisis*, paper to be presented on panel *Learning from the New Deal* at LABOR AND EMPLOYMENT RELATIONS ASSOCIATION MEETINGS, Atlanta, Georgia, January 2010

*Dissenting Speech and the Creation of a Robust Industrial Democracy*, paper presented on panel *Attaining and Retaining Working Rights in the New Administration—Predictions and Strategies*, at THE 2009 WORKING CLASS STUDIES ASSOCIATION CONFERENCE: CLASS MATTERS, University of Pittsburgh, Pittsburgh, PA, June 6, 2009

*Disloyalty and the Robust Democratic Workplace*, paper presented on panel *The New New Deal for Labor Law—Strategies for Making Labor Rights Real Rights*, at THE 2009 UNITED ASSOCIATION FOR LABOR EDUCATION (UALE) Conference, The National Labor College, Silver Spring, MD, April 17, 2009

*The Role of Dissenting Speech in Creating a Robust Industrial Democracy*, presented at LAW FACULTY COLLOQUIUM, West Virginia University, Morgantown, WV, April 1, 2009

*The Antitrust Exemption in Labor Law: Why Is the Sports Industry Special?*, Guest Lecturer, College of Law Sports Law Course, West Virginia University, Morgantown, WV, March 10 & 12, 2009

DarwinFest Film Series, *Inherit the Wind*, Discussant (with Prof. John Taylor), West Virginia University, Morgantown, WV, February 16, 2009

## **ACADEMIC LECTURES AND PRESENTATIONS—CONTINUED**

*Welcome Address, Day 2, The Evolution of Street Knowledge: Hip Hop's Influence on Law and Culture*, West Virginia University, Morgantown, WV, February 13, 2009

*The Autonomous Dignified Woman* paper presented on *Work-Life Balance Panel by the Women's Law Caucus*, West Virginia University College of Law, Morgantown, WV, October 29, 2008

*September Massacre: Last Nail in the NLRA Coffin?* West Virginia Employment Lawyers Association, Lewisburg, WV, October 25, 2008

*Employment and Labor Law Supreme Court Update* West Virginia Continuing Legal Education, Morgantown, WV, panel discussion, October 11, 2008

*Sexual Harassment in the Workplace* Panel Discussion presented by the Women's Law Caucus of the WVU College of Law, October 8, 2008

*Whistling While We Work? Law, Power, and Powerlessness on the Job*, at LAW AND SOCIETY, Montreal, Canada, Chair/Discussant, panel discussion May 31, 2008

*The Role of Disloyalty in Creating a Robust Democratic Workplace*, paper presented on panel *Making Law, Using Law*, at LAW AND SOCIETY, Montreal, Canada, May 29, 2008

*September Massacre: The Latest Battle in the War on Workers' Rights Under the NLRA*, LAW FACULTY COLLOQUIUM, West Virginia University, Morgantown, WV, April 30, 2008

WEST VIRGINIA LAW REVIEW SYMPOSIUM, THINKING OUTSIDE OF THE BOX: A POST-SAGO LOOK AT COAL MINE SAFETY, PART II, Moderator, November 2, 2007

*What You Don't Know About the NLRA*, West Virginia Employment Lawyers Association, The Woods, Berkley Springs, WV, October 27, 2007

*Reflections of a Former Athlete*, paper presented on panel *Reversing Field: Purposeful Progress*, at SPORTS LAW SYMPOSIUM, REVERSING FIELD: EXAMINING COMMERCIALIZATION, LABOR, AND RACE IN 21<sup>ST</sup> CENTURY SPORTS LAW, West Virginia University, Morgantown, WV, October 5, 2007

*False/Positives: Debating the Merits of Drug Testing*, at SPORTS LAW SYMPOSIUM, REVERSING FIELD: EXAMINING COMMERCIALIZATION, LABOR, AND RACE IN 21<sup>ST</sup> CENTURY SPORTS LAW, Moderator, , West Virginia University, Morgantown, WV, October 5, 2007

*Government Religious Expression*, at WEST VIRGINIA UNIVERSITY-AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY CONFERENCE, THE RELIGION CLAUSES IN THE 21<sup>ST</sup> CENTURY, Moderator, April 13, 2007

*Approaching Coal Mine Safety from a Comparative Law and Interdisciplinary Perspective*, paper presented at WEST VIRGINIA LAW REVIEW SYMPOSIUM, THINKING OUTSIDE OF THE BOX: A POST-SAGO LOOK AT COAL MINE SAFETY, Morgantown, WV, March 21, 2007

*The Art of "Intelligent Design": How Advocates of Creationism and Its Various Incarnations Are Re-designing the Definition of Science So That Creationism May Be Taught in Public Schools* at Brooklyn Law School, Brooklyn, NY, 2006

*Ethics and the Law*, University of St. Thomas, Houston, TX, 2005

*Presenting Oral Argument*, Appellate Court Branch Attorneys, National Labor Relations Board, Washington, DC, 2005 & 2003

**ACADEMIC LECTURES AND PRESENTATIONS—CONTINUED**

*Effect of Brand X on NLRB Adjudication, Appellate Court Branch Attorneys, National Labor Relations Board, Washington, DC, Sept 2005*

*Role of the NLRB in Sports Law*, Guest Lecturer, Catholic University of America, Columbus School of Law, 2002

*Oral Advocacy, Guest Lecturer*, George Washington University Law School, Washington, DC, 2000

*Job Security Rights of British and U.S. Workers: The Free Market Model at Work*, Oxford Law Graduate Colloquium, Oxford, England, spring 1996

*The Jurisprudence of Worker Autonomy: Lessons from Dworkin and Raz*, Oxford Law Graduate Colloquium, Oxford, England, spring 1996

Traveled through England on Fulbright Scholarship, lecturing generally on U.S. government, 1993

**CONFERENCE/LECTURE SERIES ORGANIZER**

DARWINFEST, DONLEY LECTURE, February 9, 2009 (organized with Prof. John E. Taylor)

REVERSING FIELD: EXAMINING COMMERCIALIZATION, LABOR, AND RACE IN 21<sup>ST</sup> CENTURY SPORTS LAW, October 4-5, 2007 (Faculty Adviser for Labor Law)

THINKING OUTSIDE OF THE BOX: A POST-SAGO LOOK AT COAL MINE SAFETY Part II, November 2, 2007 (Faculty Adviser to the Law Review)

THINKING OUTSIDE OF THE BOX: A POST-SAGO LOOK AT COAL MINE SAFETY PART I, March 21, 2007 (Faculty Adviser to the Law Review)

PAY EQUITY PANEL, April 9, 2007 (organized with Professor Robert Bastress)

**SCHOLARSHIP, TEACHING & SERVICE AWARDS**

Law Faculty Significant Scholarship Award, West Virginia University College of Law 2009

Law Faculty Significant Scholarship Award, West Virginia University College of Law 2008

Outstanding Faculty Contribution, Vol. 110, West Virginia Law Review 2008

Nominated University Faculty Award for Outstanding Teaching in an Adjunct Position, American University 2006

## **LEGAL PRACTICE EXPERIENCE**

### **National Labor Relations Board, Washington, D.C.**

#### **Senior Attorney, Supreme Court Branch, May 2004-January 2007**

Responsible for Supreme Court cases, significant appellate cases, and special projects

Counseled NLRB on significant labor, employment, and administrative law issues involving or related to the NLRA

Advised Office of Solicitor General on labor-related issues where U.S. filed amicus brief

#### **Senior Attorney, Appellate Court Branch, March 1997- January 2007**

Represented NLRB before the U.S. Courts of Appeals defending NLRB decisions and orders

Researched and wrote appellate briefs and petitions for rehearing en banc

Managed all aspects of appellate litigation, including settlement discussions, court-sponsored mediations, and procedural matters

Argued over two dozen cases before the courts of appeals

### **National Labor Relations Board Professional Association, Washington, DC**

#### **Vice President, 2000-03**

Represented bargaining unit of approximately 150 professional employees

Negotiated successor collective-bargaining agreement

Administered terms of collective-bargaining agreement

Adjusted grievances

#### **Shop Steward, Appellate Court Branch, 1998-2000, 2003-04**

### **Catholic Charities, Washington DC**

#### **Pro Bono Attorney, 1997-2000**

Triaged low-income client complaints to pro bono attorneys based on subject matter

### **Milbank, Tweed, Hadley & McCloy, New York, NY**

#### **Associate, Bankruptcy/Business Reorganization Department, 1991-92**

**Summer Associate, Summers 1989 and 1990**

### **New York City Commission on Human Rights, New York, NY**

#### **Pro Bono Attorney, 1991-92**

While working for Milbank, represented on a pro bono basis plaintiffs appearing before the Commission in employment discrimination cases arising under the NYC Human Rights Law

### **Hale and Dorr, Boston, MA**

**Summer Associate, Summer 1990 (split summer with Milbank, Tweed)**

## SELECTED CASES

*Fashion Valley Mall, LLC v. NLRB*, 524 F.3d 1378 (D.C. Cir. 2008)

*Fashion Valley Mall, LLC v. NLRB*, 42 Cal.4th 850, 172 P.3d 742 (2007) (reaffirming *Robins v. Pruneyard Shopping Ctr.*, 23 Cal.3d 899 (1979), affirmed sub nom. *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980) and holding that a shopping mall's anti-boycott regulation violates California's constitutional free speech provision)

*Fashion Valley Mall, LLC v. NLRB*, 451 F.3d 241 (D.C. Cir. 2006) (briefed and argued) (certifying question of state constitutional and property law to California Supreme Court)

*ITT Industries, Inc. v. NLRB*, 413 F.3d 64 (D.C. Cir. 2005) (briefed and argued)

*Walmart Foods v. NLRB*, 354 F.3d 870 (D.C. Cir. 2004) (briefed and argued)

*Walmart Foods v. NLRB*, 333 F.3d 223 (D.C. Cir. 2003) (briefed and argued)

*Aneco, Inc. v. NLRB*, 285 F.3d 386 (4th Cir. 2002) (argued)

*Scepter, Inc. v. NLRB*, 280 F.3d 1053 (D.C. Cir. 2002) (briefed and argued)

*NLRB v. Labor Ready, Inc.*, 253 F.3d 195 (4th Cir. 2001) (argued)

*BE&K Const. Co. v. NLRB*, 246 F.3d 619 (6th Cir. 2001) (briefed), reversed, 536 U.S. 516 (2002) (reversing NLRB decision)

*NLRB v. Ferguson Elec. Co.*, 242 F.3d 426 (2d Cir. 2001) (briefed and argued)

*Petrochem Insulation, Inc. v. NLRB*, 240 F.3d 26 (D.C. Cir. 2001) (briefed and argued)

*Frazier Indus. Co. v. NLRB*, 213 F.3d 750 (D.C. Cir. 2000) (briefed and argued)

*Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000) (briefed and argued)

*The Wackenhut Corp. v. NLRB*, 178 F.3d 543 (D.C. Cir. 1999) (briefed and argued)

*NLRB v. Kolkka*, 170 F.3d 937 (9th Cir. 1999) (briefed)

*NLRB v. Public Service, Electric & Gas Co.*, 157 F.3d 222 (3rd Cir. 1998) (briefed)

## PROFESSIONAL HONORS AND RECOGNITIONS

**NLRB** Nine consecutive annual performance awards for outstanding service (1997-2006)

First annual peer professionalism award for the advancement of labor law (2005)

Peer professionalism award for outstanding contributions in fostering a professional workplace (2005)

**ABA** Nominated ABA Section of Labor and Employment Federal Labor and Employment Attorney of the Year Award (2006)

**Other** ACS Policy Paper on Intelligent Design recognized on the Center For American Progress's Essential Reading list concerning the intelligent design controversy; <http://www.americanprogress.org/issues/kfiles/b1539203.html>

## **BARS AND ASSOCIATIONS**

New York State, 1991

United States Supreme Court, 2002

U.S. Courts of Appeals for the 2d, 4th, 5th, 7th, 9th, 10th, D.C. Circuits, 1997-2000

U.S. District Courts for the Southern and Eastern Districts of New York, 1992

American Bar Association

    Litigation Section

        Co-chair, Special Projects Subcommittee, Appellate Practice Committee

    Labor and Employment Law Section

        Development of the Law under the NLRA Committee

        International Labor Law Committee

    Administrative Law and Regulatory Practice Section

    Government and Public Sector Lawyers Division

American Constitution Society for Law and Policy