



**Report of the United States Delegation to the 4<sup>th</sup> International  
Conference on the Role of Unions and Labor Lawyers in  
Protecting Social Security and the  
11<sup>th</sup> Bilateral Research Exchange among  
Labor Lawyers, Trade Unionists, Neutrals and Scholars  
Havana and Pinar del Rio Cuba  
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Labor and Employment Committee and the Central de Trabajadores  
de Cuba (CTC)

## Introduction

Twenty-two U.S. delegates joined the annual National Lawyers Guild Labor & Employment Committee delegation to Cuba in March, 2010. The 7-day program was held in Havana Cuba and the western province of Pinar del Rio. This was the 11<sup>th</sup> delegation and the 4<sup>th</sup> International conference attended by Guild members. Conducting field research at the beginning of the trip, Guild lawyers and practitioners had the opportunity to meet with labor lawyers and jurists in the City of Pinar del Rio, as well as meeting with workers, union representatives and management at two tobacco related enterprises.

After the delegation returned to Havana, the two-day international conference on the defense of labor rights began. The conference was sponsored by the American Association of Jurists (AAJ) and the Latin American Association of Labor Lawyers (ALAL), with the endorsement of the Labor Law Society of the National Union of Jurists of Cuba (UNJC) and the Labor and Employment Committee of the National Lawyers Guild. The conference was further endorsed by the Central Congress of Trade Unions in Cuba (CTC).

The international event was developed from the work of the NLG L&E with the Union de Juristas de Cuba and has become a major international event, with over 200 participants from 16 countries. Several members of the U.S. delegation made presentations on current labor topics, including the Employee Free Choice Act, Worker Cooperatives, Ethical Issues for Labor Lawyers, and How Labor Lawyers Can Help Workers in the Face of the Global Economic Crisis. Delegates also visited a local school in an effort to gain new insight into the realities of Cuban workers' lives and the impact of the blockade. The delegation wrapped up their program with an exchange between the U.S. lawyers and labor lawyers in Havana who work in both a law collective and directly for the CTC (the Cuban Workers' Central Union).

The L&E delegation will continue its study of the realities of workers in Cuba next year. A copy of the 2010 Report is posted to the L&E Committee's, website <http://www.nlg-laboremploy-comm.org/>. This report reflects the impressions, and in some cases the opinions, of the authors and is not comprehensive. Each delegation is unique to itself and the participants bring to the project their own impressions and interests. The opinions expressed in this Report are those of the individual authors, not necessarily those of the National Lawyers Guild, its Labor and Employment Committee or any organization with which the authors or other participants may be affiliated.

## **II. Field Research**

### **A. Meeting with Representatives of National Union of Cuban Jurists**

Delegates had the opportunity in Pinar del Rio to meet with the managing board of the union of jurists from the Province, who explained Cuba's legal system, specifically with regard to labor cases. There are three levels of court in Cuba: municipal, provincial and national. Each of the 169 municipalities has its own court. Each province has multiple provincial courts. The number of courts in each province varies, based on density of population. The courtrooms are located so as to maximize proximity throughout each province. There is one national court, which is called the Supreme Court.

Judges at all three levels are elected by the relevant Assembly (municipal, provincial or national), based on merit, conduct and moral values. There are no campaigns or popular elections for judges. A reserve of judges is also elected, so that a sufficient number will be available as needed.

The courts use a combination of professional and lay judges, instead of a judge and jury. The lay judges are elected from workplaces and are approved by the assembly, at the municipal, provincial and Supreme Court levels. The professional judges set up training for the lay judges. According to the lawyers we met with, the lay judge participation is not just technical – its purpose is to make the process more human. Decisions are reached by majority vote of the combined professional and lay judges. Each lay judge works one month a year.

There are different kinds of courts for different kinds of cases, including civil, criminal, labor, economic, and military law. Economic courts handle cases involving contract law, environmental issues, and civil cases for actions that cause damage to the economy. The provincial courts are the courts of original jurisdiction for economic cases.

In criminal cases, the defense attorney works with the police investigator to suggest evidence to be sought. At the trial, if facts arise that are different from the investigation, the judge can stop the proceedings and direct the prosecutor to develop more facts. For lesser crimes, the courts use one professional judge and two lay judges; for more serious crimes they use two professional judges and three lay judges.

Employment cases may first be handled at an administrative level, called the Grass Roots Labor Justice Board (Organa Justicia Laboral de la Base, or "OLJB"). This Board is made up of representatives of the administration, the union and workers. The kinds of issues dealt with at this level include less serious types of worker misconduct, and issues as to which worker should get a promotion, based on qualifications, performance and seniority. The decisions can be appealed to the courts. More serious types of worker misconduct are dealt with in the first instance by the labor courts. Labor courts also handle cases of administrator misconduct, individual employee rights, worker injury, and social security. Types of worker misconduct include theft, absenteeism, insubordination, causing injuries, not following orders, aggression, and disrespect. Penalties for workers found guilty of misconduct can include demotion, fines,

and being admonished in front of the other workers. There can also be penalties assessed against managers for arbitrary treatment of workers.

A person who wants to bring a claim of any sort can go to a *bufete* (a legal collective), and have a lawyer appointed to represent him at a fee that is established for the particular type of case. The fees are set at affordable levels.



**B. Ninita Valdes Tobacco Processing Center**

The first worksite visit gave delegates the opportunity to see tobacco production at the point of sorting, weighing and distributing tobacco leaves. The processing center employs 168 workers, mostly women. This center receives leaves from the farms, which are fermented for three days, then weighed and distributed, to the workers for sorting and classification. The factory was built in 1937 as a “stripping house” where the workers, or *despalillos* strip the center veins from the tobacco leaves before they are sent to the cigar factories nearby. The veins are recycled and used as insecticide.

It was apparent that the workers could be exposed to several workplace safety issues, as workers are required to wear protective clothing, including finger guards for sorting the leaves. Respiratory and repetitive motions issues are also addressed, as workers are required to have medical clearance throughout their employment. The enterprise employs disabled workers, particularly those with hearing impairments. A union committee is in place to address safety issues.

The collective agreement addresses issues such as hours of work, breaks, insurance and security, discipline, terms of safety and protection, and hygiene. The production chief assigns most work activities. Workers receive on-the-job training, two 15-minute breaks a day, plus one hour for lunch. Basic salaries are established by statute. Base salaries range from 278 pesos/month for those who strip the veins from the leaves (mostly women) and an average of 255 pesos for moving bundles and distributing leaves after fermentation (mostly men). There are 7 managers who are paid 350 pesos/month plus incentives.

Both union and management agree on production norms but can disagree on other matters (i.e., overtime). This worksite, like most others, includes a Grass Roots Labor Justice Board for dispute resolution. The CTC trains the heads of the OJLB on issues such as labor law.



### C. Francisco Donatién Cigar Factory

The next work site was one of the prominent cigar factories in the province and city of Pinar del Rio. This is a regular stop for tourists, as factory tours welcome over 300 tourists daily. We were greeted by the general manager. There are 127 workers at this factory, all members of the tobacco workers union. Most of the cigars produced at this factory are for export.



### **III. International Conference**

The objective of the conference was to debate a set of topics with the view of mobilizing lawyers and trade unions with regard to the role of the state and its social responsibility to protect the economic, social and cultural rights of working people. The conference began with an opening session in the main lecture hall of the University of Havana and the keynote Speech by Antonio Raudilio Martin Sanchez, President of the Cuban Society of Labor Law of the National Union of Jurists. The next day, individual presentations and workshops were held as part of the international conference. The following are summaries of many of the presentations made at the international legal conference.

#### **“Transformation of Early 19<sup>th</sup> Century Capitalism and its Effect on the Labor World” Marcio Pochman (Brazil)**

Mr. Pochman discussed in general terms the recent history of capitalist accumulation to make the point that the capitalist system had exhausted its previous method of accumulation, and was in a crisis to replace it. Mr. Pochman focused on the more recent history of capitalism, starting in the 1970's. At that time there was a development of certain trends. Primary among them was the weakening of labor parties and movements throughout the developed world. There was a general increase of productivity through new technologies, with the result being an increase in unemployment. The 1970's had turned into a structural crisis of capitalism that was marked by an increase precariousness of labor and an increase in the hours of work.

The more recent trend in the increase in labor productivity is that it is not related to material work. Rather, according to Mr. Pochman, during the recent development, 70 percent of labor is related to services. In such an economy, capitalist expansion has taken an entirely new form.

This new form of capitalist expansion has some defining characteristics, one of which is that material work can be done anywhere. Work is, or can be mobile. In services related work, computers can allow the work to be done anywhere and at anytime. This has had the effect of defeating eight hours day as a standard.

Secondly, there has been a diversification in who is doing the work. Women have increased their participation in the work force. That increase in participation has resulted in a decline of population growth. This in turn has brought about changes in housing and consumption patterns.

As a result of these changes on the structure and nature of capitalist exploitation, the labor movements in these developing countries have begun to lose their focus. Community organizing is less effective. There is no longer any stability in the local labor markets.

**“Labor Law and the World Economic Crisis from the European Viewpoint”**  
**Jordi Garcia Viñas (Spain)**

According to Mr. Viñas, the financial crisis of 2007 and the global crisis that followed, have no apparent solution; nor are they over. As history shows, this is not the first crisis of capitalism nor will it be the last.

Like Professor Pochman, Professor Viñas sees the beginning of this crisis to be in the transformation of European Capitalism that began in the 1970’s. During that period, there was a significant increase in unemployment. Along with that was an increase in intervention by state agencies.

It was during that period that state deregulation of the labor market began in earnest. In the 1970’s, the state began to deregulate issues of layoffs, employment benefits, labor models and flexible labor market. We have these same issues today.

According to Dr. Viñas, in recent years, the crisis in the labor market, namely the high unemployment, first started in Spain and then in Ireland. Spain has almost 2.5 million unemployed, which is almost twenty percent of the total of European unemployment. The difference between this crisis and the one in the 70’s was that in the prior crisis of capitalism, women were most affected, and they were not equal. During this latest crisis, GDP has increased very little, yet unemployment has increased dramatically.

The European governments have responded to this crisis in a number of ways. First, Governments have responded either with neo-liberal measures, or with more intervention by the state. In particular, the Spanish response has been a dramatic increase in public expenditures. Because of the single currency however, this has produced a somewhat limited response. Nonetheless, the European governments have increased spending and the public investment in infrastructure and have attempted to support the small enterprises.

Dr. Viñas does not see a reason for optimism. However he sees some good developments. He sees more environmental concerns and a greater promotion of European citizenship. However at the same time, there has been a decrease in personal income although public expenditures have increased. This is headed for a breakdown.

By 2020, if trends continue, 45 percent of the public expenditures will be for retirement pensions. At the same time the European population will continue to age. The result will be, less young workers to support the pensioners. The only possible solutions that the government sees is to extend the age of retirement, provide financial incentives for people to work longer, create more flexible working conditions, improve the prospect of life long learning and improve the quality of employment.

**“Social Legislation or Neo-Liberal Legislation? The Puerto Rican Experience”**  
**Alejandro Torres (Puerto Rico)**

Mr. Torres addressed a number of important social trends in Puerto Rico and their effect on the social reality in Puerto Rico. According to Mr. Torres, the trend towards neoliberalism has been a most consistent trend since it affects all forms of socially progressive legislation. Its effect goes all way back to 1987. The most significant effects of neo-liberalism are the privatization of public sector institutions, incentives to foreign capitalism and the encouragement of immigration, particularly to the United States.

This was all facilitated, in part, by actions of the U.S. Congress. The U.S. Congress effectively eliminated many of the progressive elements of the Puerto Rican Constitution. Those elements were in the form of guarantees to citizens of certain rights and benefits. Since 1987, therefore, the neoliberal trend has been to undermine all forms of this protective legislation.

More recently, this trend has accelerated. In January 2009 an executive order was issued declaring a fiscal emergency. This fiscal emergency brought about the reduction of the state budget by two billion dollars, which was approximately twenty percent of the governmental budget. On February 2010, there was a further reduction of public employment by approximately fifteen thousand people. In Puerto Rico almost a third of the entire workforce, works for the government.

Presently, four out of ten people in Puerto Rico are looking for a job. Nonetheless, the government is handing over control to private employers, by privatization of governmental institutions. This has resulted in a significant loss of income for the government, and loss of public sector jobs. Today in Puerto Rico, thirty one percent of the people receive some form of welfare benefits. Forty percent are involved in the food stamps program. Yet, despite the poverty, Puerto Rico still sends thirty five billion dollars as profits to the United States, while maintaining a public debt of approximately one hundred and fifty seven billion dollars.

It is believed that because of this fiscal emergency, the present public sector in Puerto Rico will lose an additional forty eight governmental agencies. Each agency provided a public service. At the same time, the government will be providing grants to real estate developers, and reducing environmental regulations for these same developers. The only way to stop this, according to Mr. Torres, is through the unity of all the social sectors. The worst result will be for social sectors to do nothing and to allow these trends to continue.

**“Is the World Economic Crisis an Opportunity for Labor Law and Social Security Progress?”**

**Laura Mora Cabello del Alba (Spain)**

According to the speaker, there is no answer to the question, but as a labor law professor in a public university in Spain, she sees the crisis of capitalism presenting great challenges. Labor law in the European Union (EU) has emerged from workers struggle during the industrial revolution where working condition were bad. Labor law emerged as a compromise to social

investment as the working class organized and gain equal footing with the “ruling class,” many legal documents reflected the gains of independence for workers.

The workers revolution in Russia in 1980 is one example. This was an attempt to find an alternative to capitalism; workers would control the means of production. Now there are no limits as reformism has found ground in a socialist worker state. Another example is World War II, where workers needed protection and thus created a social security system. Workers gained ground in the EU, women joined the mass and became part of the productive world (where formerly they were part of the reproductive world.)

There is always a capitalist movement seeking cheaper labor, and the trade unions suffer. Workers have assumed the characteristic of consumers, a weaker position, and markets in the EU are changing. The bailout plans have not been successful as real unemployment is hidden. Limits are placed on capitalism by those with the real interest, the banks.

Governments in France and Spain are looking at labor law reform to address this crisis in the economy. They want to decrease production costs (impacting workers) and increase profits (also impacting workers due to higher unemployment). According to the professor, in Spain, they are indoctrinated to believe if labor is cheaper, jobs will be created. In reality, capital will improve but workers will not benefit.

So what will Spain do going forward? Capitalism is in crisis and cannot grow; greed has reached its limit and is destroying the environment. Unionists need to fight for laws that resist greed, i.e. reduced hours of work. With more women in the workplace, there is a creative approach to working conditions. Prof. Cabello identifies two political movements in the solution: the first, name the reality, what is happening, tell it like it is despite media reporting the crisis for workers is fabricated; and second, do away with the elected opposition, criticizing is not enough. Workers must resist the attack. The proposed reforms lack meaning and it is our responsibility to resist and build something entirely different.

**Maria Estrella Zuñiga Poblet (Chile)**  
**“The World Economic Crisis and the Capital-Labor Relationship”**

As a labor lawyer, Sra. Poblet spoke about the response of Chile to recent tragedies, including the earthquake in February (2010) and the tsunami following the quake. The response was a “great challenge.” She spoke of the model experiment (Neoliberalism) in Chile from Spain and the U.K. Keynesian theory created this capitalist state in Chile.

In Chile, there are thirty-six years of experience with labor flexibility involving at-will employment. There are whole sectors of workers without collective bargaining rights, specifically in the public sector, and informal sector. The experience in Chile allowed them to face this reality of a “subsidized state” and privatized workers. The challenge is to identify new forums of resistance. Society has been replaced by a concept of the market; trade unions are divided as to what to do as collective rights have decreased. Classical forms used by workers to resist may not be successful today.

**“How Can Labor Lawyers Help Workers Confront the Global Economic Crisis?”**  
**Dean Hubbard (United States)**

Mr. Hubbard began by pointing out that every individual in the world has a legal right, under international law, to food, shelter, education, and to work with dignity. This fact provides the foundation for a powerful organizing frame. But in all parts of the world, for most people, these legal rights have no substance. He argued that the collective power of organized working people could compose a strong force for what he calls a “Socially Aware Global Economy.” But the rise of neoliberalism has profoundly impacted the density and power of unions in the U.S. and many other parts of the world.

However, he argued, workers are not simply victims. They can and do succeed in turning the tables on neoliberal policies. When they do, it is often through organizing strategies, simultaneously local and transnational, which attempt to make the promises of human rights law a living reality. Grass roots labor and community organizing, linked to transnational social movement networks, may provide the best route towards obtaining legal protection of the internationally recognized human rights of workers in the United States. And Lawyers acting in coordination with those movements can make a significant contribution to those efforts.

Workers’ collective and individual political, civil and economic rights are inextricably interdependent. As labor lawyers we must fight for them all, wherever we are. One particularly promising trend in the use of political and civil rights to defend economic rights is the emerging use by workers’ rights advocates of international forums to publicize and organize against violations of the human rights of workers in the U.S. Mr. Hubbard discussed one such example with which he had recently been personally involved.

The so-called “Taylor Law” in New York bars all strikes in the public sector, and punishes “illegal” strikes with extensive fines, the loss of automatic dues deduction, and the imprisonment of trade union leaders. Courts in New York and the U.S. Supreme Court have not been sympathetic to challenges to the validity of the Taylor Law on the basis of guarantees within the United States or New York State Constitutions, and most U.S. courts haven’t expressly incorporated the ILO Core Conventions into their interpretations of domestic labor law.

New York’s Transport Workers Union, for which Mr. Hubbard serves as senior supervising attorney, is leading a concerted campaign to change this state of affairs. Last November, TWU Local 100, supported by its parent union and the national and global labor federations with which it is affiliated, filed a Complaint with the ILO Committee on Freedom of Association. The Complaint charges that the Taylor Law, as applied to penalize the Local and its members following a brief 2005 strike, seriously infringes on the core trade union rights of freedom of association and collective bargaining protected by ILO Conventions 87 and 98.

Just days after the TWU filed the ILO Complaint, the International Commission for Labor Rights (ICLR) brought a distinguished group of international labor experts to New York to investigate the Local’s allegations. The panel of experts met with a wide range of elected officials, leaders and members of Local 100 and other New York unions, and experts on public

health. (Members of MTA management, however, declined to meet with the group.) The climax of the experts' visit was a public event, sponsored by the Human Rights Institute at Columbia Law School, concerning whether and how the Taylor Law might be reformed to better protect both rights and public order.

The penalties imposed by the courts under the Taylor Law included a \$2.5 million fine to the union, a fine on the workers of two days' wages for every day they were out, individual fines on the union's officers, indefinite suspension of the Union's ability to receive dues directly from its members' paychecks, and the imprisonment of the Union's President. These penalties are part of a broader legal and policy framework in the state of New York, which seeks to deter legitimate trade union activity in the public sector by criminalizing it. In contrast, the strike itself was part of a long and distinguished history of human rights struggles by public sector workers in the United States. Few people remember, for example, that Rev. Dr. Martin Luther King, Jr. was murdered while supporting the human rights of public workers in Memphis, Tennessee to organize and strike.

Mr. Hubbard was optimistic about the outcome of the Complaint, arguing that the Taylor Law cannot be reconciled with the principles espoused by the ILO. As the ILO's CFA has noted, "[t]he right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests."

Ultimately, workers' human rights will not be enforced under either international or domestic law, in New York or elsewhere, and a Socially Aware Global Economy will not come into existence, until working and poor people have the political and economic power to make it happen. Attaining that kind of power will require a coming together of a broad array of social movements built by millions of people committed to militant, long term, strategic, grass roots transnational organizing.

**“Social Responsibility of Employers Toward the Workers and Their  
Working Conditions: Corporate Manslaughter”  
Stephen Cottingham (United Kingdom)**

British criminal law prohibits the offenses of murder and manslaughter. These offenses reflect different levels of unlawful killing. In Britain there is a clear distinction between murder and manslaughter. Murder generally requires a degree of intent. Manslaughter is a lesser offense based on inadvertence or negligence in circumstances where the perpetrator did not intend to cause death but failed to do enough to prevent death from occurring. The British authorities have no hesitation in using the law of manslaughter on occasions. The only exception appears to be where deaths occur at work.

Under the British legal system, a worker who suffers injury at work is entitled to pursue a claim for compensation against his/her employer or any other body responsible under the common law of negligence and/or the various statutory duties which establish health and safety standards in the workplace. The dependents of a person killed at work are entitled to pursue similar claims. These compensation claims are pursued under the civil law. The government also has powers to prosecute employers under criminal law in cases of accidents at work or even

near misses, whether death or injury has occurred or not. Regrettably the government very rarely uses these powers.

British industry has a shocking record of workplace deaths. Prosecutions arising out of those deaths are rare and are often unsuccessful. For many years the British trade union movement has campaigned for corporate manslaughter legislation that would enable the authorities to prosecute employers and other organizations whose working methods and failures to install adequate safety procedures have caused death at work.

After many years of campaigning, the British government finally passed the Corporate Manslaughter and Corporate Homicide Act in 2007. Regrettably the legislation fails to provide British workers with the protection that they deserve.

In 2005/2006 the British Health and Safety Executive (HSE), recorded 212 fatal accidents at work. 59 of those deaths occurred in the construction industry alone. The HSE has estimated that in 70% of fatal accidents, "*positive action by management could have saved lives.*" British employers have tolerated this state of affairs by treating health and safety as a financial burden rather than a fundamental human right. While management is prepared to compromise workers' lives on grounds of expense, deaths at work are likely to continue at similar levels.

Even with the decline of traditionally dangerous industries like mining, shipbuilding and heavy engineering, an average of over 4 workers have been killed at work in the UK every week. These figures do not include the estimated 3,000 to 12,000 who die from industrial disease every year. These grim statistics, and their apparent acceptance by the authorities, have forced the trade union movement to press for stiffer penalties for employers who cause death at work. Ever since the Labor government was elected in 1997, successive British governments promised to introduce laws against corporate manslaughter.

After outlining the chronology of legislative enactments and attempts to criminalize corporate manslaughter, it is clear that the key to effective corporate manslaughter legislation is the imposition of a duty of care on individual directors and senior management. *The Management of Health & Safety at Work Regulations 1992* which derived from a European Union Directive, anticipate this by requiring employers to appoint a "competent person" to assist them comply with health and safety law and practice.

The Corporate Manslaughter and Corporate Homicide Bill was aimed at companies and some public bodies. It specifically exempted individuals from prosecution. An organization would be guilty of corporate manslaughter if its activities were managed or organized in such a way that they resulted in a person's death due to a gross breach of its duty of care.

The new law, which came in to effect in 2007, was a massive disappointment to the Unions who have campaigned for effective corporate manslaughter legislation, and falls short of imposing a duty of care on individual corporate officers. Employers will only be convicted where *gross* breach has occurred. The use of the word "gross" suggests that a very high standard of proof will be needed to achieve a conviction. Faced with the choice of charging an employer with a straightforward breach of health and safety legislation, where a normal standard of proof

applies, or corporate manslaughter with the need to prove gross breach, many prosecutors will take the easier option. The new law represents a series of missed opportunities. The legislation would have been much more effective if it imposed specific health and safety obligations on directors and senior managers, backed with the threat of imprisonment. Probation orders could have been considered as well as the threat of disqualification for directors.

It is difficult to find evidence to show the number of corporate manslaughter prosecutions there have been since the introduction of legislation in 2007. The fact there is very little evidence suggests that the law is very rarely used. In view of the difficulties in proving gross breach of duty, many prosecutors would prefer to prosecute companies for work place deaths under the Health & Safety at Work Act 1974. As that legislation does not require proof of gross breach, it is easier and more effective to obtain a conviction under that legislation. In the meanwhile the Unions continue to campaign for an improvement in the legislation and especially for directors' duties to be included in the future.

**“International Situation and the New Occupational Hazards Caused by Digital Equipment and its Regulation: The Mexican Approach”  
Flores Selgado (Mexico)**

The reality is that labor law is being developed all over Latin America. The practical trend however in recent years has been the reduction in the rights of labor, and its subservience to new technologies. This has resulted in outsourcing of labor, a reduction of union strength, lack of stability in the employment market, and the “flexibilization” of labor.

It is very ironic to hear the viewpoint from a Mexican speaker. It shows that globalization and loss of job has affected even Mexico. Mexican jobs, in particular manufacturing jobs, are also moving to China or to other cheaper labor markets.

In Mexico, new technologies, in particular, computerization, have affected all branches of employment and the law. This has resulted in an improvement of production efficiencies. Public institutions, however, have not responded to these changes in the circumstances in work. Nonetheless these workers must be provided with the same protection as other material workers.

Presently, in Mexico, cyber work is not covered by any labor legislation. Proposals are being made. However there is nothing in the ILO Conventions that covers it. One reason for this is that many of the workers work from home, and do not work in traditional work environments. They are isolated from other workers.

There are clearly some advantages to this kind of work. The disabled and other impaired workers may do this type of work. Cyber work allows for flexibility in terms of hours, so that a family member can do the work and still care for other family members. The downside however is that there is generally no health or retirement benefits to these workers. There is no job security and there is no protection of the working conditions. In short, there are no unions.

As a result, this work can be very destructive on the workers eyesight, their backs and their hands. Because it is unregulated it also allows for very long working hours and

exploitation. There is no protection for that. In Mexico, they are proposing rules for a formal federal labor law to include provisions to protect these kinds of workers.

**“I.T.E.R. from the Working Environment to Social Security”  
Eulalia Viamontes Guilbeaux (Cuba)**

Ms. Guilbeaux is on the faculty of the University of Havana. She addressed issues of the environment, as the environment in which people work. The very concept of the environment must include the human beings in it. According to Ms. Guilbeaux, in Cuba they think of the environment, not in the abstract or in general terms, first and foremost as the environment where people work.

All areas of law, including environmental law, are connected to all areas of human activity. All the areas are interconnected. For that reason, environmental matters had to be immediately addressed. If governments and unions wait, the damage maybe permanent, and repair may be too late. Damages to the environment mean damages to workers.

There is a direct link between environmental issues and the health and safety issues of workers. Another effect to this is that if all the aspects of the environment are considered, promoting sound environmental policies, promotes the social security of the people. It reduces the cost of expensive healthcare, the frequency of disabilities, etc. In this perspective the most important thing are not the facilities, the investments or the profit, but the human beings.

**“Autonomy of the Right to Work, the Procedural Labor Law and the  
Criminal Labor Law: Design of a Labor Code”  
Paula Isabel Passini Alcira (Argentina)**

The primary objective of this presentation was to provide an overview of the labor laws of Argentina, which are designed to provide maximum protections for workers and ensure employer accountability. Another objective of the presentation was to share with delegates the idea of devising a labor code including laws and supporting procedures and criminal laws. The purpose of establishing criminal penalties is to prohibit employers from escaping the consequences of their actions. For example, under a strictly civil system, violating employers were allowed to pay a “simple” fine for committing serious crimes against their employees. Those employers thought it was more convenient to simply pay a fine and continue the illegal conduct. According to the presenter, Argentina has been grappling with these issues across many decades. In 1944, the country’s labor judiciary drafted a series of protective principles which turned out be insufficient and in fact were enacted to the detriment of workers. In 1945, the Court declared these measures to be unconstitutional. They then began to apply a Trade Code, which established adherence to the principles of labor law.

In 1974, a Labor Law Contract was created. The creation of this contract provided strong protection and finally there was a balance between employer accountability and worker responsibility. Then, the 21927 Law of 1976 changed this and stripped away important worker protections, including collective rights, e.g. right to strike. In the 1980s some strides were made and workers again saw some improvements. In the 1990s neo-liberalism prevailed. Laws were

enacted that prohibited workers from making claims against their employers in the same private citizens were allowed to make complaints. Protections applied to ordinary citizens could not be applied to workers. These labor laws went against the interests of workers. In the 2000s International treaties were incorporated into national laws. This shift resulted in the enactment of stronger civil laws, which provided workers with more protection than labor laws. Lawmakers returned to laws enacted in 1974 when laws supported workers' rights. Previous standards were reenacted, including provisions for compensation for occupational injuries and illnesses. It was determined that profit-seeking companies should not be able to establish the standards for workers. Procedural laws also suffered when an informal system was put in place. After Articles 155 and 309 (1979) modified the procedures, many setbacks occurred, including the erosion of the right of privacy and a relaxing of police and administrative codes. These infractions only resulted in small fines and there was no true enforcement. Lawmakers had to start anew and revisit laws enacted more than forty (40) years ago.

The current labor laws of Argentina are quite advanced. There is now a comprehensive body of legislation designed to protect workers from various abuses, including discrimination, wrongful terminations and class biases. To guarantee such protections, the country has adopted specific ILO Conventions, e.g. ILO 111<sup>th</sup> Convention, which provides equal opportunities at work; ILO 100<sup>th</sup>, which provides equal pay, ILO 169, prohibits discrimination against aboriginals. All of these protections, including protection against maternity discrimination are incorporated into Argentina's national labor codes. Of the various codes cited were Code Articles 17 and 31. It is important to note that all provisions made by incorporation are a binding part of the international public order. The presenter also cited Article 152, which provides for a labor contract.

Through various laws, both national and international, there is a conscious attempt to provide both protection from abuse and relief in the event such abuses occur. In stark contrast to many U.S. statutes and codes, these protections are built into every piece of labor legislation, e.g. Code 23592 which is a Non-Discrimination Law enacted to repair workers wrongfully laid off. Again in stark contrast to U.S. labor laws, class discrimination is prohibited. Persons with various chronic illnesses, including but not limited to, diabetes, epilepsy and AIDS are protected from all forms of discrimination. If such workers are terminated or wrongfully laid off, immediate actions must be taken to provide justice and repair.

Argentina's labor law system has enacted various national laws and adopted international provisions to protect union members from retaliation. If they are wrongfully terminated or laid off for continuing their union membership or participating in union activities, specific laws provide immediate relief. To illustrate the point, Sister Alcira cited two cases where employers were found to be in violation of the constitution and various sections of national codes and international protections: 1) a 2004 discrimination case involving a non-Argentinean national and 2) a 2006 discrimination case against a Uruguayan physician who graduated law school and was denied the right to do her internship. Other examples cited included an age discrimination case involving a 65-year old worker where the employer's actions were found to be in violation of Article 44 of the country's constitutional provision regarding the "right to work."

Among the most egregious forms of abuse of workers were psychological harassment/bullying and physical violence. When these cases are investigated the general methods for establishing proof of liability, included: confessions; written documentation (including journal transcripts) and testimony. There is a presumption of innocence threaded throughout the process. Of particular note was the notion that prevention must be the priority followed by recourse and repair. The elements of violence as a cause of action included: abuse of power; intentionality; frequency/ repetition; retaliation; written and verbal threats.

Throughout the presentation, Sister Alcira stressed the ultimate role of the state in insuring compliance at all levels. Such accountability at the State level will result in the prevention of accidents and dramatically improve workplace conditions. Without compliance, standards are useless. Because of the State's active involvement, workers now see greater levels of employer responsibility and a decrease in worker injuries. Labor Code 881662 was cited during this segment of presenter's remarks. This bill provides for 2 – 4 years of imprisonment for violations and additional criminal sanctions. There continue to be specific protections in place regarding child labor. Children now go to school instead of being forced to go to work. Wages are regulated for those children who do work (180 pesos). Penal and labor laws have established to ensure compliance (Law 207-0027 cited).

Sister Alcira presented a comprehensive overview that included specific statutory references, factual accounts from actual cases and wide range of examples of increased levels of governmental accountability.

**“Labor Law Violations by the Mexican Labor Board in the  
Agreements Signed During Conciliation”  
Humberto Vazquez Marmolejo (Mexico)**

This presentation provided tremendous insight into common practices of the Mexico Labor Board that have led to widespread disregard for basic worker protections. These practices include missing deadlines and failing to timely notify the employer of a hearing; failing to sequester lawyers who are not supposed to be in the hearing; and advising workers to accept unapproved settlements, e.g. 50% of wages owed in lieu of what they are actually owed. Additional acts of misconduct committed by the Mexican Labor Board, include allowing employers to force employees to sign pre-resignation agreements prior to being hired. This practice of having a worker sign a blank contract resignation in advance and waive his or her rights allows employers to retaliate against workers who speak out about workplace unfairness and other infractions. As soon as an employer is unhappy with the worker, he can use the “signed” contract to terminate employment. According to Brother Marmolejo, these acts often are committed right under the nose of the government in violation of the Constitution.

Wrongful terminations are permitted even when the employer fails to provide grounds for such actions. In short, the “Rule of Law” is not respected. To resolve these and other acts of misconduct and corruption, advocates have called on the government to take proactive steps, which included the following proposals for action: Demand greater accountability from the government and urge officials to provide tougher penalties/sanctions for violating employers. Provide protection for attorneys who must file for relief to the House or Senate. This will insure

that these attorneys will see each process through to completion and not abandon the aggrieved worker. In addition to these measures, a more effective grievance and conciliation procedure was put in place. This process including providing the worker with an opportunity to present his or her case and review evidence the boss may have against him or her. Additionally, it allows the worker to arbitrate for relief. There must be a hearing within fifteen (15) days of the worker's filing of his or her complaint. The Board must follow all procedures and timely notify the employer regarding all hearing dates. This will avoid the practice of employers using the failed notice to deny workers their right to bring their claims before the appropriate judicial or administrative body.

### **“The System of Social Security in Cuba” Yanelis Matos (Cuba)**

According to Chapter VII, Article 47 of the Constitution of the Republic of Cuba, the purpose of the Social Security System is to assure “adequate protection to every worker who is unable to work because of age, illness or disability. If the worker dies, this protection will be extended to his family.”

The right to work is a constitutional right and duty and those who are unable to work due to age, illness or disability must be cared for by the national government. The law covers disability due to pregnancy and permits 100% of earnings from the day the female worker's doctor says she is unable to work until 12 weeks after the birth of the baby. Thereafter, the female worker is entitled to 60% of earnings up to 12 months after the birth of the child if the mother is unable to work as a result of having to care for the child. See Social Security Programs Throughout the World, The Americas, 2009, U.S. Social Security Administration Office of Retirement and Disability Policy. All workers are covered under the Social Security System regardless of whether they work for governmental bodies, mixed state and private/cooperative enterprises, cooperatives or private enterprises.

The Cuban Social Security Law and Regulations are set forth in a 102 page booklet entitled, “Ley de Seguridad Social y su Reglamento” which was most recently amended in April 2009 to provide, inter alia, that with 30 years of service women are entitled to retire at 60 years of age and men at 65 years of age. Those workers who have worked in arduous work for 75% of the years of the 30 years service or 50% of the years immediately before retirement may retire five years earlier, i.e., 55 years of age for women and 60 years of age for men. Partial pensions are available to those workers reaching the required age if they have worked at least 20 years. Chapter II, Articles 22 & 23.

Medical benefits are provided to disabled, ill and retired workers through the free medical benefits provided by the government which include dental care, hospitalization, medicine, appliances, and rehabilitation.

Social security benefits in Cuba are funded by contributions from employers, the self-employed and the national government. While social security systems may provide many enumerated benefits the benefits become illusory if the system is under funded. This point was made by the presenter from the Dominican Republic because, apparently there, the system has

many enumerated benefits but they are not always realized by the workers because the system is inadequately funded. Hence, the benefits are merely ideal and are not a reality.

**“The Original Native Justice, the Peasants’ Justice, and Ordinary Justice in the  
New Bolivian Constitution”  
Ivan Campero Villalb (Bolivia)**

Bolivia’s climate is tropical and it encompasses 1,900,000 square kilometers of land. The present situation is based on the fact that Bolivia recently gained independence after 300 years of colonization. Before being occupied, it was primarily an agrarian society with an Inca king at the top of society. Other groupings included approximately one-third of the people being nobility, but most families were peasants and earned virtually nothing.

Inca society distributed land for workers to grow and produce. If the land stopped being worked by the immediate family, it reverted to others. Land could be passed down but if it was inherited by a woman, she received only half.

In 1536 the Spaniards colonized/dominated Bolivia and began economic exploitation. The exploitation continued for 300 years. The indigenous peoples were enslaved. In 1824, an independent constitution was created by Simon Bolivar. However, peasants/indigenous people were not recognized in the new constitution.

Colonization resulted in four classes of people: Creoles - children of Spanish; Mestizos – mixed Spanish and Indigenous; Indigenous peoples; and Mulattos – mixed Spanish and African descent. Society/economic system developed similar to other neighboring countries: from Slavery to feudalism to capitalism.

Recent events and revolution:

- |           |  |
|-----------|--|
| 1952      | Organized agrarian trade unions.   |
| 1952-1964 | Revolution was frustrated even as the peasant masses were revolting.   |
| 1979      | Labor code enacted; authorized conflict resolution in those communities including indigenous peoples and other areas. Farmers were a part of justice system and conflict resolution among indigenous people existed. |
| 1989      | Began the reign of military governments. Under military dictatorship leftists were considered criminals. Then the USSR collapsed late 1980's.  |

In the 1990’s, the presenter, dean of the school of law, began a program to train university students as mediators. The aim was to create a system of conflict resolution, or “community justice.” As of 2009, the Constitution authorizes each community to administer justice within its jurisdiction, in accordance with its own customs, including its indigenous customs. At the community level, a lawyer is not needed. The matters handled include resolution of small fights, misdemeanors, and property damage of less than \$1,000. Currently, mediation and conciliation are key forms of conflict resolution.

In 1999, a children’s code was enacted. Children under 14 years are not supposed to work. (The coming of age is 18.) But to survive, younger children do work (shoe shiners, etc.).

Evo Morales emerged as a leader, being the head of the federation of coca workers, and understood the needs of the masses. As the military dictatorships and governmental instability ended, anger among the people welled. For instance, mayors who stole were lynched by the people. There was recognition that there was a need for laws, rules and community justice.

Bolivia now has a constitutional assembly with a constitution enacted January 6, 2009. Bolivia also has universal suffrage (used to have to be able to read/write to vote). Evo Morales appointed Supreme Court of Justice a couple of weeks ago; two Indian women were included.

The government began to teach people to read and write. People began organizing in the countryside with revolutionary principles. Farmers are being trained as mediators for conflict resolution based on the concept of community justice.

Community justice workers are not elected and different territories can implement justice for their areas. 36 nationalities with own languages exist in Bolivia. Autonomy has been given to the different areas and is guaranteed by the new constitution. Bolivia needs to define the powers of community justice.

The presenter is currently working on a draft labor code. Government attorneys and workers are drafting the code with governmental ministers reviewing.

While labor law has existed since a decree in 1942, the current aim is to transform the labor procedural code, so that the workers will not have to wait as long or incur as much cost to obtain a resolution of their claims. Towards that end, the proposal is to have public hearings, and incorporate labor issues, and to eliminate the practice of issuing written decisions. Further, if a decision is delayed, the amount of compensation will be increased. The goal is to solve worker conflicts within one week of conflict arising.

**“Ethical Considerations for U. S. Labor Lawyers”  
Joan G. Hill (United States)**

Ms. Hill set forth the legal obligations of both unions and their lawyers in a regulatory context that varies by state. Lawyers are often conflicted in their dual obligation to represent the interests of individual union members and the union as a collective--a conflict that often occurs in a political system that privileges individual rights over collective rights in federal and local statutes.

Unions in the United States owe a “duty of fair representation” to workers in the bargaining units that they represent, regardless of union membership. This duty requires the union to enforce and police the workers’ contractual rights under collective bargaining agreement, and to do so in a way that is not arbitrary. Under this legal framework, an individual union member has the right to an attorney paid for by the union to assert his or her individual grievance. This makes it critical for lawyers to identify exactly who is the client: the individual worker or the union?

The U.S. system highly regulates the conduct of lawyers and unions in an otherwise largely deregulated industrial relations system when it comes to the conduct of corporations. Conflict between actors under these rules makes litigation more probable as the individual goals and rights under the duty of fair representation often collide with the unions' collective goals.



United States Panel (from Left to Right)  
Tami Lee, (Kasara Davidson and Guillermo Ferriol-Cuba- Moderators) Joan Hill,  
Zack Wolfe, Monte Givhan and Miquel Ortiz

**“Alternatives to Provision of Direct Services:  
Cooperatives for Ex-Prisoners as a Means of Social Reintegration”  
Mercer Monte Givhan (United States)**

The object of Professor Givhan’s presentation was to propose a progressive solution to an institutional problem in the U.S.: how to reintegrate ex-prisoners into the U.S. society post-incarceration. The statistics are alarming, as 1 in 100 U.S. citizens is currently incarcerated and as of 2008, there were more than 1.6 million adult prisoners in the U.S., with another 5 million under some other form of government supervision. Young men of color are particularly vulnerable to incarceration.

Professor Givhan identifies and asserts that the major barrier to the successful reintegration of ex-prisoners is the difficulty in securing employment after release. Although the U.S. spent approximately \$67 billion to incarcerate its citizens in 2008, Prof. Givhan cautions against strictly utilitarian solutions to the problem. He argues that the solution for change must be rooted not only in economic terms, but also in social justice. In other words, in this time of economic crisis we must be concerned with more than how much it costs. We must also concern ourselves with what to do with prisoners once they are released into society. The dominant paradigm for solving ex-prisoner re-entry issues is through “direct services” that tend to

demonize prisoners by focusing on their individual “deficits” and fail to address the institutional issues at the root of the problem.

As an alternative, Prof. Givhan proposes worker cooperatives as a way of motivating rather than demonizing workers as individuals by granting the ex-prisoners the authority to create and control their work and to operate for the benefit of their communities. These cooperatives would be based on the values of self-help, personal responsibility, democracy, equality, equity and solidarity- all of which have been considered to be essential to the successful reintegration of ex-prisoners into society.

Prof. Givhan supports his proposal by citing to three successful worker cooperative programs across the world: (1) Sri-Lanka’s “Discharged Builder’s Society,” which employed discharged masons and carpenters under building contracts, (2) British Columbia’s “InsideArt” program which allowed ex-prisoners to sell their art through a virtual gallery and (3) Italy’s “Cooperativa 29 Guigno” program which created job opportunities for hundreds of ex-prisoners in a large number of economic sectors. Prof. Givhan sees these types of successful cooperative programs as a potential bridge between local and global progressive action that has the ability to reframe the individual and local problems faced by ex-prisoners as an international economic social movement capable of challenging the exploitation of prison labor under neo-liberal capitalism.

**“The Employee Free Choice Act”  
Miguel Ortiz (United States)**

Mr. Ortiz makes a simple, logical call for something elusive in the exceptional case of the United States: freedom of association. The current workplace climate in the U.S. creates a context in which, employers, not workers, control whether the labor can organize collectively in a union of their choice. Although the National Labor Relations Act promises workers the right to organize, legal and ideological favoritism of employer rights and sanctioned employer sabotage of the representation process has resulted in the denial of this important human right.

In support of this assertion, Mr. Ortiz reminds us that a mere 12.4% of workers in the United States belong to a union, only 7.2% of those work in the private, profit-making sector. This low unionization rate has been shown to be correlated with employer conduct, particularly that 25% of companies illegally fire at least one worker during union organization campaigns and 75% of companies hire anti-union consultants to assist in fighting unions. Other employer conduct allowed to sabotage employee choice includes: mandatory anti-union meetings, threats to call immigration authorities and threats to close factories. One potential legislative solution to employer cooptation of the union selection process is the Employee Free Choice Act (“EFCA”). It would allow workers to choose a union without employer interference, guarantee that workers would get a contract after selecting a union, and impose meaningful penalties against employers that violate the employees’ right to form a union. EFCA requires that the employer must accept a union after a majority of employees sign cards authorizing a union to represent them. It also gives employers and unions 90 days to bargain a contract on their own or else seek mediation assistance from federal mediators. Not insignificantly, the legislation would provide stronger penalties against unlawful employers- up to \$20,000 per violation for willfully and repeatedly

violating employee rights, and triple back pay awarded to an employee fired during the organizing campaign or negotiations for a first contract. Mr. Ortiz argues that workers need EFCA because it would support wage growth, protect existing benefits and terms and conditions of employment, create new jobs by increasing the buying power of workers and increase the political power of workers through unionization.

**“Returning to Collective Action”**  
**Zachary Wolfe (United States)**

Prof. Wolfe, motivated by the political interests and curiosity of his students, focuses on the role of organized labor in progressive social justice movements. He proposes that unions go back in history to the days when the U.S. social justice model was one of collective action, rather than conformance with the legal processes and dispute resolution channels favored by the government and corporate elite. Prof. Wolfe suggests that unions may have forgotten that in the U.S. context, the only real power wielded by workers is the power to disrupt profit-making businesses by withholding labor through general strikes. He is dismayed by the tendency of unions and other progressive social movements in the U.S. to seek redress for worker struggles through the lobbying of the political elite. The argument is that such compromise is an acceptance of a system in which social change can only occur under terms outlined by the elite—creating a system of voluntary change from above rather than revolutionary change from below.

Prof. Wolfe envisions a new labor movement that is not limited by law, but finds creative and even historical ways to force change through conduct outside the law, if not against, the restrictions of the law. He urges the abandonment of the fear of being labeled “radical” and the ensuing societal repercussions, and he looks favorably on renewed youth action as witnessed by the “Day of Action for Education” on March 4, 2010, when students, unions and activists participated in collective action by seizing government property and public highways in a fight to ensure the fair allocation of educational resources.

In summary of the U.S. panel, the panelists paint a picture of organizational and institutional dysfunction in governments, corporations, unions and progressive movements. Broken institutions, as suggested by Ms. Hill, simultaneously create jobs for lawyers while bringing ethical dilemmas to organizations and groups that are trying to protect workers in a political system that favors individual rights over collective rights. Thus, lawyers’ jobs are complicated when actors do not share the same ultimate collective goals. However, as Prof. Givhan shows, broken institutions also force public interest lawyers to be creative and progressive in their approaches to meeting the needs of ex-prisoners as workers. Although the legislative branch of the United States government is often slow to act in protecting the freedom of association of workers, Mr. Ortiz shows that such an institutional failure may be addressed finally by legislation returning that choice to the hands of employees. However, even if such legislative change ultimately fails, Prof. Wolfe reminds us that lawyers, students and activists can find novel approaches for social change by looking to history for examples of how to restore collective action by testing the restrictions of the regulations of the elite.

**“Social Emergency and the Workers’ Rights in Colombia”  
Manual Muñoz Uribe (Colombia)**

As background, delegates were told about the 3.5 million in Columbia who are displaced and live below the poverty line. Many have had their farmland stolen by the paramilitary in this country. New Constitutional provisions have attempted to address issues of the working class but the involvement of the paramilitary can not be shed. Union workers in particular have been demonized in Columbia. Lawyers with ALAL have filed a claim with the Columbia Constitutional Court to ensure the prevalence of the Constitution; efforts have been resisted to revoke protections guaranteed by the 1991 and 2002 Constitution and Reality Pact. Labor is supporting the rule of law, which has largely been ignored. There has been no ruling on the claim of Constitutional violations; final pleadings have been filed, a judgment is pending.

**“The Exclusion of the Right to Strike and Alternative Grievance  
Resolutions in the Panama Canal”  
Carlos Ayala Montero (Panama)**

In Panama, the utilization of strikes has decreased while collective bargaining has increased. In 1990, the labor code was reformed. The General of Labor can decide to suspend a strike and establish mandatory arbitration. Up to then, the Canal Zone was managed by the United States.

With regard to the right to strike, the Convention of Vienna was interpreted to approve and guarantee this right. Workers in Panama organized and then the U.S. government militarized the Panama Canal. Short strikes existed from the 1900’s through the 1970’s. Federal unions, like the American Federation of Government Employees, organized the workers of the Panama Canal. Also, during this period, the issue of which law governed, the National Labor Relations Act or Federal Employees Relations Act, had to be resolved. Rights were hampered by the federal ban on the striking in the public sector.

Instead, workers looked to ILO standards for the freedom of association and assembly. Ultimately the right to strike was banned and large fines were assessed. Sr. Montero called upon all trade unionists to preserve the right to strike and defend this right to all workers, public or private sector.

**The Economic Crisis and Cuban Workers  
Dr. Raymundo Navarro, Cuba (CTC)**

Cuban workers have been victimized by the economic crisis. There are three key elements to this crisis:

1. The blockade by the United States with economic and financial consequences;
2. Hurricanes; and
3. International economic crisis.

The CTC recognizes that workers are impacted by the crisis and offer a level of protection to the workers. For example, 55% of the Cuban fiscal budget goes to worker programs. Cuba has a large export market, i.e., sugar, but is also an importer of goods such as food and oil. Cuba sells nickel, but the price has dropped significantly. Sugar prices are down as well. Cuba imports food to the extent of \$1.5 to \$2 billion annually. Oil prices have also impacted the economy.

The issue now is how can the trade union movement in Cuba aid in the development of the economy. Cuba is presently undertaking an analysis of the economic situation to address several matters:

1. Increase the efficiency of production;
2. Increase exports;
3. Continue efforts to save energy;
4. Decrease spending; and
5. Rid the country of paternalism.

### **“Labor, Social and Political Disputes in Mexico Today” Oscar Alzaga (Mexico)**

This special intervention began with the premise that the main problem in Mexico is similar or equal to that of the United States – the government and companies are working against workers.

Sr. Alzaga gave examples of many sectors where workers have been under attack: teachers, oil workers, and the two main conflicts presently, that of electric workers and mineworkers. He gave the conference attendees information about the long dispute with the mineworkers in Cananea. Their strike was ruled illegal by the government, and through a declaration of force *majeure* cancelled all working relationship and the collective bargaining agreement. Subsequently, the employees were given 24 hours to return to work but the miners, *los mineros* and their families decided to stay in the streets and defend themselves. The issues are now before the ILO asking to address the fundamental human rights of these mineworkers. A decision is pending. He thanked those attending for the international support for the striking miners and aid in resisting the government aggression. After being targeted for imprisonment under fraudulent charges, the President of their union, Napoleon Gomez Urrutia, is in exile from the country and now resides in Canada.

In the energy sector, in October of 2009, the president declared the public electrical company, through constitutional power, to a private company and all workers were fired. The Army was used to send some 44,000 workers to the streets. In the opinion of the presenter, the Constitution is clear: to modify a public company to a private company and thus fire all the public employees cannot be done without a right to hearing. Only after a hearing can a worker be fired. However, the President of Mexico decided to proceed in this manner.

The only explanation for the violation of these labor rights is by knowing the President of Mexico, who is in office unlawfully and workers in illegal ways. Trade unionists in Mexico cannot understand the logic of these actions, the privatization of energy, except that the Mexican union in the energy section showed the best tradition of democracy against the government. This union was very important along with teachers and miners. These are vital unions to the movement in Mexico.

The Calderon government has been rejected three times by the public. However, there is a new player in Mexico, a social/economic and political player, the Mexican citizens who are now in the United States, some 32 million. This has changed the way the economy operates, via remittances. An example is the display of immigrants in Los Angeles, where millions took to the streets. Trade unions are gaining strength in cities like Los Angeles, being carried by the migrant workers.

**Special Intervention**  
**Guillermo Ferriol Molina (Cuba)**

This presentation focused on the world situation and its impact on Cuba, where Cuba has struggled through one crisis after another. In general, we do not speak about Neoliberalism as we did in the past but it still exists according to the speaker. What has been maintained in Cuba, to resist child labor (as there is no such thing as good child labor) and maintained high density of union membership (about 90%).

Recently, a new law, Ley 105, was passed to allow workers to have second employment, or moonlight; period evaluations of workers are now used. All of these changes have been made to secure fundamental labor rights.

**“The Labor Process in the 21st Century”**  
**Hugo Mansueti (Argentina)**

In Argentina, it is common for there to be non-compliance with law, like a cobweb, where only the small ant can be caught, and the big ones go through. He explained the procedure and experience in his country. According to the speaker, the ILO has given us norms about decent work, aspects of family and labor are addressed as well as health and safety. All sectors need to be included in legislation where compliance with regulation is central to the concept of “decent work.”



### **III. Meeting at Union of Cuban Jurists (UNJC), Havana “The Practice of Labor Law in Cuba”**

A representative from the Cuban Institute for Friendship with the People (ICAP) addressed us first, thanking us for our solidarity work regarding the campaign against Cuba by the United States. She said that there are false accusations of human rights violations against Cuba. Cuba is not perfect, but it fights for justice, democracy, and human rights. Because of the embargo by the U.S., Cuba cannot do more. It wants to develop “people to people” links with North Americans.

She told us that our work in visiting Cuba is important. She asked us to return home and spread the truth about Cuba. There are serious problems in the U.S. – the economic crises, unemployment, war in the Middle East, and the health care crises. We need unity for the truth to prevail. For the sake of future generations, we need to work together to make a better world. Feel sorry for ourselves is not a solution.

Then Guillermo Ferriol, V.P. of the Union of Cuban Jurists addressed us. There will soon be new guidelines for workers in Cuba. The laws are being re-written to improve the economy and protect workers. The system is being changed to make government enterprises more profitable. However, the government will not abandon any workers.

There will be more regulations for employers. If there are layoffs in unproductive sectors of the economy, they will try to find other jobs or send workers to school for training. Workers will also receive unemployment benefits. It will be the employer’s responsibility to locate work for laid off workers. They anticipate that about 40,000 agricultural workers will lose jobs. First, they will look for other agricultural jobs. Then, they will look to other sectors of the economy.

In the special period, in the early ‘90s, many factories closed after the collapse of the Soviet Union. Thirty-five percent of trade was lost during this period. This was the initial impetus, which the recent financial crisis accelerated, resulting in the instant situation of

restructuring the economy for more efficiency and profitability. The social goals have not changed and there will continue to be respect for the rights of labor.

Francesca Martinez, director of the Labor Law Clinic in Havana spoke to us. So did Elio Valerino, director of the provincial and national lawyers for the CTC. In 1994, the CTC established a team of lawyers to represent individual workers in labor disputes. All of these lawyers work for the CTC. Originally there was a team of four lawyers. Now, there are 19 CTC lawyers representing workers nationwide.

Some CTC lawyers give advice to the national, provincial, or municipal unions (CTC). They help negotiate contracts for workers. Contracts concern job performance and workers rights. If an individual worker is mistreated or treated unfairly, the lawyers will give advice or represent the worker. They can get advice for free. A worker can go to any labor clinic in the country for free advice. A worker who has been disciplined or has a complaint has a right to a hearing. There can be a grass roots hearing, with union members and management, or a higher hearing with a judge.

The CTC lawyers train union leaders regarding the labor laws. The lawyers can also represent workers in court. There are very reasonable fees for court representation. Labor cases are open to the public. The grass roots labor justice board hearings are before local assemblies, in the workplace. All of the other workers are present. They are conducted after work hours. The hearings are the first level, before going to the court level. There are no lawyers at the grass roots level.

The OJLBs consist of a panel of one management representative, one union representative, and one person elected by the workers. The workers elect the president of the panel. People are trained to serve on the grass roots panel. The resolution is binding on all parties. Some of these decisions can be appealed to court. Ninety percent of the grass roots decisions are not appealed by anyone. The people on the grass roots panel are not paid extra for doing this. Management must provide the resources for the grass roots proceeding.

The decisions of the grass roots panel are written, giving reasons for the decision. The grass roots panel members do not represent any party – they are supposed to decide the questions fairly based on the facts and the law.

The means of production are owned by the workers. Ultimately, workers, through the government, decide how to run the economy, according to Valerino. The purpose of management is to make the enterprise more efficient. Valerino argued that there are no class contradictions because management and workers are part of the same working class. The manager is another worker, not an owner. A manager can be replaced.

Management and workers have the same goals. The state acts through the government to improve the lives of everyone. If there is a profit, it is first used to improve the enterprise. Then it goes to society. There is free medical care, free school and college, sports and arts education. These are paid for by the profits from enterprises.

There are different ministries for different parts of the economy. The ministry establishes particular enterprises. The head of the ministry picks the management of each enterprise. The purpose is to produce products and employ workers. Employees have the social function of making each enterprise more effective.

Management must give an annual report to the workers. The workers can respond with their suggestions for improvement. This is the nature of Cuban society, according to Valerino – negotiations and conciliation between management and workers for the sake of society. The parties should fulfill their respective obligations and remedy any problems. Then, if conciliation does not work, the parties can resort to the labor justice system. There are individual and collective labor conflicts every day that are successfully resolved.

The world economic crisis does affect Cuba. The goal is to try to preserve socialist principles and workers' rights. If a worker is fired, s/he can go to court with a lawyer. Some workplaces have never had a grass roots proceeding because there have been no complaints. If there is a conflict of interest for a member of a grass roots panel, they will use another person. Management can be fined for an ongoing violation. Individual members of management can be fired for violating the law.

There is a 24 day process for resolving disputes at the grass roots level. In court, there is a three month time limit. A worker gets accrued vacation and pay if terminated. If the worker is reinstated, s/he gets back pay. It is a fast process. Jose Marti said, "Whoever delays justice turns against himself."

The court hearings take place in a labor tribunal. If the proceeding concerns a moral issue, the hearing may be closed to the public. Workers are evaluated monthly for productivity and discipline. These evaluations are used by management for continuing employment, salary, retraining, promotions, etc. If a worker is laid-off, they will continue to receive 60 – 100% of their salary to support themselves and their family.

It is hard to establish legal standards for workers. The ministry of labor proposes the standards. Then the union and the industry discuss the proposed standards.

Lawyers sign a code of ethics. If a lawyer acts unethically, they can lose their license. There is an obligation of confidentiality to the individual client.

## **Conclusion**

The field interviews with workers, union representatives and labor lawyers, as well as our exchange at the UNJC, provided an opportunity for members of our delegation to gain insight into the workings of the Cuban labor relations system, and for our Cuban counterparts to learn something about the working lives of our diverse delegation as well. The international conference broadened our horizons by introducing us to the challenges facing workers throughout Latin America, as well as a wide range of responses to these challenges by their advocates.



**2010 U.S. Delegation with Cuban Participants**

**Penda Aiken**, Brooklyn, New York  
**Kurt Berggren**, Ann Arbor, Michigan  
**Kasara Davidson**, New York, New York  
**Thomas Egan**, Orlando, Florida  
**Mercer “Monte” Givhan**, Jamaica, New York  
**Sandra Jaribu Hill**, Greenville, Mississippi  
**Joan Hill**, Nashville, Tennessee  
**Kenneth Dean Hubbard**, Westport, Connecticut  
**Tamara Lee**, Ithaca NY  
**Joel Leidner**, Los Angeles, California  
**Suzanne Leidner**, Los Angeles, California  
**Ted Marrero**, Orlando, Florida  
**Marilyn Raskin Ortiz**, Selkirk, New York  
**Miguel Ortiz**, Selkirk, New York  
**Brian Roberts**, Washington, D.C.  
**Mark Schneider**, Plattsburgh, New York  
**Heidi Siegfried**, Brooklyn, New York  
**Sally Stix**, Madison, Wisconsin  
**Ronald Traylor**, East Bridgewater, Massachusetts  
**Alexander Weeden**, Orlando, Florida  
**Roger Weeden**, Orlando, Florida  
**Danielle Weekes**, New York, New York