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**“Revisiting the
Future of Work and
Worker Organization”**

The 2017 Jerry Wurf
Memorial Lecture



The Labor and Worklife Program
Harvard Law School

Jerry Wurf Memorial Lecture

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JERRY WURF MEMORIAL FUND (1982)
Harvard Trade Union Program, Harvard Law School

The Jerry Wurf Memorial Fund was established in memory of Jerry Wurf, the late President of the American Federation of State, County and Municipal Employees (AFSCME). Its income is used to initiate programs and activities that “reflect Jerry Wurf’s belief in the dignity of work, and his commitment to improving the quality of lives of working people, to free open thought and debate about public policy issues, to informed political action...and to reflect his interests in the quality of management in public service, especially as it assures the ability of workers to do their jobs with maximum effect and efficiency in environments sensitive to their needs and activities.”

Keynote Address
Christine L. Owens



Christine L. Owens

On my own behalf, and on behalf of the National Employment Law Project (which those of you who know us refer to as “NELP”), I thank the Labor and Worklife Program for inviting me to deliver today’s Jerry Wurf Lecture. I am especially honored and humbled to do so this year, which marks the retirement of Elaine Bernard, who has shepherded this program so ably since 1989, enriching its curriculum, embracing an ever-broadening agenda of issues affecting work and worker representation, and expanding the network of participating students, scholars, and practitioners. Elaine’s scholarship has contributed significantly to our understanding and vision of the role of unions and worker organization in the broader economy, and her leadership has enhanced the role of labor education in the U.S. and worldwide.

It is an added treat that the incoming Labor and Worklife Program Director, Sharon Block, is also here today. I had the privilege of working closely with Sharon in her multi-titled roles as right-hand woman and senior advisor to Labor Secretary Tom Perez, and also with her extraordinary colleague and former Wage and Hour Administrator David Weil, who has joined us as well.

In partnership with Secretary Perez and an unparalleled team of political and career staff, this dynamic duo of Block & Weil accomplished more in their relatively short tenures than previous Departments—except for that led by the great Frances

Perkins—achieved over multiple years. They did so by putting workers and their interests first-and-foremost, keeping their noses to the grindstone day in and day out, and staking out strong and sometimes bold positions to restore and strengthen labor rights and protections enforced by the Department. That much of what they attempted to do is threatened in this new era is testament to the significance of the work they and their colleagues undertook, the initiatives they launched, and the positive impact they sought to create for workers across the nation.

Finally, it is always a pleasure to be in the company of Jerry Wurf’s wife Mildred and his daughter, Abigail. Jerry was a powerful labor leader, but Mildred has always known how to speak truth to power—and Jerry’s greatness was undoubtedly enhanced by his decades-long partnership in work and in life with her. That sense of passion and compassion, vision and possibility that imbued Mildred and Jerry individually and in their lives and work together took root in Abigail as well, infusing her career as a dancer and writer and mentor and coach.

The leadership transition underway here at the Labor and Worklife Program is momentous, though perhaps not quite as monumental as the transition underway in the U.S., and indeed, in much of the world. In some respects, it reminds me of the transition underway the first and only time I heard Jerry Wurf speak publicly. It was Solidarity Day in 1981, when the AFL-CIO, with AFSCME fielding the largest contingent, launched a massive demonstration on the mall in Washington to shine a spot-

light on Ronald Reagan's attacks on workers and their unions. My father-in-law and mentor, Winn Newman, was general counsel of AFSCME at the time, and the extended Newman family turned out in force. Jerry had been ill for some time and, in fact, was hospitalized as Solidarity Day approached. Nevertheless, he willed himself to the massive march, made the physically challenging climb to the podium, and spoke to the hundreds of thousands of men and women who had traveled to Washington from across America to put a stake in the ground for working people. Winn turned to me after Jerry's remarks and said, "You may have just heard the final speech of one of the greatest labor leaders of all time."

Winn was right, and Jerry passed away a short time later. But what strikes me now as I reflect on that day and the news reports surrounding it is not what Jerry said to the marchers, but what he told a Washington Post reporter in reflecting on the march: "In spite of this turnout, there is no guarantee our task will succeed," he explained. "This is a beginning of a long, difficult, frustrating process to turn the country around" (see Eric Pianin, Warren Brown, Margaret Engel, et. al., "250,000 March to Protest Reagan's Policies," Washington Post, September 20, 1981). It reminds me of a similar observation by the great civil rights leader, Congressman John Lewis of Georgia: "Our struggle is a struggle to redeem the soul of America. It's not a struggle that lasts for a few days, a few weeks, a few months, or a few years. It is the struggle of a lifetime, more than one lifetime."

Today, as our nation and our movement embark upon yet another transition—arguably one that is more ominous—my NELP colleagues and I—and I am sure, many of you—take these admonitions to heart. They are sobering, but comforting too. They remind us that the history of the movement for workers' rights and representation has a long and uneven sweep—and that, no matter the moment and circumstances we face, our role is to bend the moral arc of that history toward economic, social, and political justice for every working person, both here and abroad.

So how do we do so at a transitional, transformative moment like this? The answers are not straightforward or simple. Yet I believe firmly that if we can envision the future of work and worker organization we want to build; if we are open to taking the steps and risks necessary to invent that future; and if we are willing to invest—our time, our energy, our ideas, hopes and resources—in it, our movement can transcend even this moment, becoming stronger, more united, and more purposeful than ever before.

I believe this in part because this is the model Jerry Wurf followed at pivotal moments for his great union--when, as leader of AFSCME District Council 37 and facing formidable odds, he won the nation's first collective bargaining agreement for public employees. When still relatively new in his tenure as President of AFSCME, he transformed the horror of Dr. Martin Luther King's assassination in 1968 into union recognition and a contract for striking African-American sanitation workers in Memphis, TN. When he responded to

the demands of women within AFSCME for a seat at the table, with a slightly more colorful version of “What took you so long,” he then took things a step further by launching a nationwide movement for pay equity, which included the first-ever successful strike to win fair pay for women.

I believe we can shape our movement’s future, but doing so requires that we are clear-headed about where we are now and the challenges we face—and it is to those I now turn.

Start with the obvious: Union density has plummeted. In 1954, slightly more than one-third of all wage and salary earners in the US were union members. By 2016, that share had fallen to only 10.7 percent. Indeed, in the 33-year-period between 1983, when the Labor Department first began reporting union data and the Reagan Revolution had taken hold, and last year, the share of workers in unions fell by roughly half. Only the growth and relative stability (until recently) of public sector unionism – with AFSCME and a handful of other unions still representing roughly a third of public sector employees – staved off an even deeper dive. In 2016, according to Bureau of Labor Statistics data cited by the Center for Economic and Policy Research, 34.4 percent of public sector workers belonged to unions, compared with only 6.4 percent in the private sector.

The decline has been significant nationwide, but perhaps most consequentially in traditional union strongholds like Michigan, Ohio, Pennsylvania and Wisconsin. Between 2000 and 2016, the share of union members in each state fell by 29 percent,

18 percent, 28 percent, and a stunning 54 percent, respectively.

Recent union membership decline can obscure the fact that private sector unionism had already begun eroding before the Reagan revolution. Other mitigating events and circumstances, including national reforms the union movement played a major role in winning (like civil rights and fair pay laws), masked some of the impacts of union decline. Moreover, before the 1980s, wage growth, by-and-large, went hand-in-hand with productivity growth. Enactment or expansion of social insurance and work-based safety net programs eased hardships of job loss and economic transformation. And importantly, manufacturing grew numerically and retained a healthy (though declining) share of overall US employment between 1954 and 1984, rising from just under 15 million jobs at the end of 1984 to just over 18 million three decades later. Robust growth in this heavily unionized sector helped mitigate forces exerting downward pressure on wages and unionization.

After reaching its high point in 1984, however, manufacturing began a long and steady descent both numerically and as a share of overall employment. The Bureau of Labor Statistics recently reported a total of just over 12 million manufacturing jobs in December 2016, a slight increase from two years earlier but still only 10 percent of overall employment. Of course, many of our newer manufacturing jobs are temporary or part-time, with lower pay and benefits. Flipping the script, employment in professional and business services and in education and health services, which ac-

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counted for only about 13 percent of private sector jobs in 1954, now accounts for more than one in three private sector positions. This sectoral shift in the composition of U.S. jobs has both exacerbated the decline in unionization and reduced the capacity of unionization to offset the erosion of wages and benefits associated with the growth of service-providing jobs.

Compounding the effects of these sectoral and industry shifts, twenty years of Reagan-Bush-and-Bush appointments to the federal courts and labor agencies and the steady consolidation of Republican power and control in the states have shifted the legal landscape and architecture within which many of our organizing and representational battles take place as well as where many of our fights to represent workers occur. Supreme Court restrictions on class action lawsuits and its repeated endorsement of mandatory arbitration of employment disputes – with the Court taking up a case this year that will decide whether such provisions also apply to potential class claims – have tightened the vise on worker litigation. With the recent nomination of 10th Circuit Court of Appeals Judge Neil Gorsuch to fill the Supreme Court vacancy, the balance is likely to shift even more toward employer and corporate interests, away from access to and relief for workers in the courts. (I have not studied Judge Gorsuch’s record, but for those of you interested in doing so, you should consult relevant short summaries in the On Labor: Workers, Unions, and Politics blog founded by Professors Benjamin Sachs and Jack Goldsmith at <https://on-labor.org/>).

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Free market and anti-regulatory ideologues appointed to key policy and enforcement positions at the National Labor Relations Board and the Labor Department have diluted basic labor standards, reduced enforcement efficacy and shifted public resources away from protecting the rights of workers, including the right to organize and bargain, onto scrutiny of labor unions and other worker organizations. Obama labor appointees did an admirable job of updating standards, with DOL adopting rules on, among others, overtime pay, protections against dangerous silica dust exposure, federal wage rights for home care workers, fiduciary obligations of investment advisors, and labor standards compliance among federal contractors. The NLRB streamlined election procedures, extended representation rights to a broader universe of employees, and refined a “joint employer” standard to reflect real-world business structures and ensure accountability for corporate behavior. Both the Board and the Department made strategic and targeted enforcement a priority, to magnify the impact of their efforts.

Yet the new Congress and Administration have these and other initiatives in their sights. Republicans in Congress have invoked the Congressional Review Act to roll back some regulations, while other rules will likely be tackled through substantive legislation and/or the federal government will abandon its defense of rules currently subject to court challenge. Congressional Republicans have introduced measures to repeal prevailing wage requirements and enact a national right-to-work law for the private sector. The potential impact of

Trump Administration executive orders that aim to reduce regulation overall may have a negative effect on workers and their representatives (particularly if these orders become a backdoor way to repeal worker-friendly regulation), but they, like the immigration orders, are under court review. Finally, while the administration has not yet repealed several Obama-era executive orders that leverage federal procurement to improve wages and working conditions (including freer exercise of union rights) for employees of federal contractors, the assumption is that action on these will follow confirmation of a new Secretary of Labor.

Meanwhile, right-to-work marches on. With confirmation of a Scalia replacement for the Supreme Court coming soon, Friedrichs-style cases challenging the constitutionality of public sector fair share fee arrangements are moving ahead in California and Illinois. Conventional wisdom held that Scalia, the likely swing vote in *Friedrichs v. California Teachers Association*, would join four other justices to overrule *Abood v. Detroit Board of Education* and invalidate agency shops in the public sector—thus installing right-to-work nationwide in the public sector. There is no reason to believe that Judge Gorsuch or any other Trump nominee to the Supreme Court would view the agency fee issue differently.

At the state level, Kentucky and Missouri recently adopted right-to-work laws, bringing to 27 the number of right-to-work states. Proposals are pending in six other states, including all-Republican-controlled New Hampshire and Ohio. An undeniable objective of these and related at-

tacks on union standards like prevailing wage requirements (9 states), project labor agreements (4 states), public sector bargaining (7 states), public sector payroll deduction (8 states) and public employee pensions (17 states) is to cut workers' wages and benefits. Wisconsin, however, is Exhibit A of another, possibly overriding motive for these attacks—reducing union power by shrinking union ranks and draining union coffers. With Scott Walker rolling back public employee bargaining rights in 2010 and the state passing its right-to-work in 2015, the share of Wisconsin's unionized workforce has fallen from 15 percent in 2008 to only 8.1 percent last year.

Enough already: This is where we are—clearly not the moment any of us would have chosen, but it is the moment that has chosen us. It is a bleak time, but I do not believe the anti-union, anti-worker drumbeat surrounding us tolls the death knell of our movement. Points of peril are also often points of pivot, and so it can be for us as well. There are encouraging signs of wind at our backs.

First, since dipping sharply in 2009, public support for unions has rebounded, according to Gallup polls. Asked in late 2016 whether they would prefer that unions have more, the same or less influence, a plurality opt for more (with 62 percent saying more or the same). Solid majorities think unions are good for (“mostly help”) their members, the economy, and unionized businesses (though not for non-union workers). Strikingly, millennials view unions even more favorably than their older counterparts, and even a slight plurality

“Strikingly, millennials view unions even more favorably than their older counterparts, and even a slight plurality of Republican millennials have a favorable view of unions”

of Republican millennials have a favorable view of unions (See Elizabeth Bruening, “Even Conservative Millennials Support Unions,” The New Republic online, May 1, 2015).

Second, as AFSCME President Lee Saunders described in last year’s Jerry Wurf Lecture, AFSCME has doubled down on its internal organizing since 2014, training more than 14,000 member activists, shoring up commitments of current members, and growing its ranks by 200,000. In some respects, this is old-fashioned trade unionism, but as President Saunders noted, it also has brought about something of a culture change within the union. Brought to scale, internal organizing like this can deepen existing ties and build new ones.

Third, the mobilizations we have seen over just the last few weeks are unprecedented and powerful. They provide solid opportunities for continued coalition-development and bridge-building, but there is a real need to ensure that this activism and anger are imbued with direction and mission. The union movement can make a significant contribution in transforming these mobilizations into cohesive action that shapes the national debate about work and the economy, engages an even broader range of constituencies, builds worker power, and eventually achieves alignment between the needs and interests of working people and the politics and priorities of their elected leaders.

Finally, I would argue that even the election of Donald Trump holds seeds of promise for what we must do to reclaim the future of work and worker organization. That is certainly not because of a

policy agenda he and Congress will pursue, but because of the powerful thirst for real change his election reflects, especially in those states where local economies have been hammered, union numbers have shrunk, and union rights have been pummeled. It is instructive that many voters who cast their ballots for Barack Obama in 2008 voted for Donald Trump in 2016. And it is noteworthy that when we look beneath the anger and vitriol, the reality is that many Trump voters do not share his priorities and values, and they eschew his policies. Reclaiming the future of work and worker organization requires that we recapture those voters—not with soundbites and message-testing, but with solid policies backed up by real action that speaks to their needs and their children’s futures.

In the last few minutes, I will turn to some reflections on how we reclaim the future of work and worker organization. There is no dearth of ideas about how we, as a movement of and for working people, can do this. Like many of our partners in the formal union movement and beyond, at NELP we are engaged in serious soul-searching about how and where we can make our best contribution to this effort. The ideas below are neither new nor original, though delivering on them is long overdue.

Digging in and holding on: First, we must fight to keep what we have won. We know that we will not succeed in all instances, but holding the line where and when we can is crucial for the workers we seek to represent and for positioning ourselves for bigger battles and victories ahead.

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At NELP, we will be investing heavily in legal, communications, organizing support, and other strategies to protect signature achievements of the Obama Labor Department and NLRB. We will fight in the courts and before Congress to protect and preserve these achievements, and we will work with allies on the ground to codify these important federal reforms under similar state laws. Just as important, we will take our case to the public, elevating issues related to wages and benefits, safe and healthy workplaces, access to good jobs, and responsible contracting and employer accountability. We'll build campaigns that ask and answer labor's perennial question: Which side are you on? Along with our partners, we will use every tool in our toolbox to make the case for why we cannot go back, and how we should move ahead.

To be clear, we know this is an uphill battle. But the advances we are able to preserve and the victories we are able to win help lay the foundation for more ahead. Already, there are some encouraging developments. Just yesterday, the labor committee of the New Hampshire legislature recommended against passage of right-to-work; we are told the legislature generally defers to committee recommendations. While there will be no let-up between now and next week, when the legislature acts, we are encouraged that unions have rolled back right-to-work in New Hampshire, preventing its odious spread into the Northeast. Also on February 8, 2017, a Texas judge upheld the Labor Department's fiduciary rule requiring investment advisors to disclose potential conflicts of interest that could color their advice to clients. These are important wins for those directly affected, for

staunching opposition momentum, and for helping preserve a foundation and define the path for future fights.

Grow our ranks and build alliances within a broader worker movement: Important as it is to protect and preserve policy wins, we cannot simply be guardians of the status quo. We must also organize and mobilize, educate and agitate. To that end, we have to build the ranks of the broader worker movement, adding new union members, forging stronger alliances with potential partners, and nurturing new constellations of activists and advocates committed to workers and worker organization.

I have already described AFSCME's internal organizing program as an example of an inward-focused effort that has also helped to bring new members into the union. Programs like AFSCME Strong are important models for strengthening internal allegiance and solidarity and expanding outward to recruit new members. We need to learn from and replicate such models broadly.

Other efforts like the AFL-CIO's Working America target non-union working class voters for membership and engagement around a host of economic issues. With a membership topping three million, Working America organizers are at the doors in neighborhoods across America every night, taking the pulse of residents on pocketbook issues like health care, education, and jobs and trade, and providing individuals workable opportunities to weigh in with policymakers on their concerns. Working America members in numerous cit-

ies and states have been instrumental in winning minimum wage increases, paid leave, and quality education and health care reforms.

Sector-specific membership organizations, like Restaurant Opportunities Center-United, National Domestic Workers Alliance (NDWA), and Freelancers Union, have emerged over the past two decades to fill some of the representation gaps created by law or tradition. While not functioning as unions in the traditional sense of collective bargaining, they nevertheless advocate aggressively for their members in a range of forums and – in part because of inadequacies of labor law – explore non-conventional strategies to protect and promote their members’ interests and win changes in policy and practice. NDWA, for example, was a leader in federal efforts to win the Labor Department rule extending federal minimum wage and overtime pay protections to home care workers. And along with its local affiliates and partners in labor and otherwise, NDWA has won Domestic Worker Bill of Rights measures in seven states, extending basic labor protections to domestic workers in those states.

Some formal affiliations have already developed between and among this growing universe of formal labor and alt-labor groups. Owning the future of work and worker organization, however, demands that we double down in trying to weave this patchwork of efforts into a cohesive tapestry of a nationwide worker movement. There are undeniable differences and occasional tensions between and among these stakeholders, but there is far more that unites than divides us, and if ever

there was a moment that cried out for fortifying our alliance, it is now.

Understand the “future of work” and models for representing workers: Considerable scholarship has explored how work will be structured, performed, and rewarded in the future, particularly in the emerging gig economy. Predictions about the number of jobs and their nature abound and vary widely, and it is hard to separate the wheat from the chaff. But as a worker movement, we need to wrestle with these questions, in order to figure out how best to support and advocate for workers in changing work structures and the most effective organizational models for doing so.

As David Weil’s seminal study on *The Fissured Workplace* (Harvard University Press, 2014) makes clear, much about the future of work is neither new nor novel, but simply a continuation of a decades-long-trend of business restructuring to outsource work once done in-house to other entities. Research by Lawrence Katz and Alan Krueger documents significant rise in the types of work arrangements—temporary, on-call, contract company employment and independent contractors or freelancers—spawned by this restructuring (See NBER Working Paper 22667). Between 2005 and 2015, Katz and Krueger estimate that the share of the workforce in these types of arrangements grew by half, rising from 10.7 percent to 15.8 percent. The rate of growth was greatest for workers in contract companies.—that is, workers on the payroll of one company to provide services to another. As illuminated by Labor Department and NLRB guidance on basic questions of employee

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status and employer (and joint employer) accountability in such arrangements, existing law and representation models can and should apply to these arrangements. That suggests that a major, first-step approach to improving the future of work is to strengthen and enforce existing laws and protections. For many workers in these arrangements, we do not need to start from scratch and discard old models; nor should we do so.

On the other hand, workers who genuinely operate as independent contractors and freelancers—who essentially are running their own business—fall outside many conventional labor standards, employee benefit, and social insurance protections. Representing and protecting the interests of these workers will require new models for provision of rights and benefits and for organizing and bargaining.

NELP’s starting point is this: All workers, regardless of employment classification or sector, should receive baseline labor standards protections like a guaranteed minimum wage, safe and healthy workplaces, protections against discrimination and retaliation, and a voice on the job (See the NELP report by Rebecca Smith, “Rights On Demand: Ensuring Workplace Standards and Worker Security in the On-Demand Economy,” September 9, 2015). Beyond these protections, the time has come to look beyond tying benefits and social insurance solely to formal employer-employee relationships and to begin developing broad public/private programs that are universal, portable, and flexible for all workers; our thoughts on minimal standards for such programs are in a new report by

NELP and the Roosevelt Institute entitled “Work Benefits: Ensuring Economic Security in the 21st Century.”

Beyond extending rights, benefits, and protections to these workers, organizing and representation models that give them voice in the policies and practices affecting their working conditions and livelihoods are essential to striking an equitable power balance and integrating this still small, but nevertheless significant segment of the workforce into the larger worker movement. Freelancers Union has pioneered various models of benefits-provision and representation on behalf of its membership of several-hundred thousand independent workers across the country. Most recently, it spearheaded the successful campaign for passage of New York City’s Freelance Isn’t Free Act, which creates a first in the nation avenue for freelancers to enter into binding contracts for their gigs and collect payment for the work they have done. And Seattle has passed legislation that creates a mechanism for organizing and bargaining by independent drivers. Though vigorously challenged in the courts, the city has moved ahead with implementing regulations. As one of the campaign organizers told me, thinking outside the box of labor law was essential in crafting their strategy and eventual legislation.

Building our skills: Finally, we cannot adequately prepare for the future of work and worker representation without mastering new technologies that not only directly affect the assignment and performance of work, but also can enhance or impede worker organizing and representation. Employ-

“... we cannot adequately prepare for the future of work and worker representation without mastering new technologies”

ers have done so already, harnessing technology to monitor on-the-job performance, predict employee behaviors, implement just-in-time scheduling, undermine organizing, and otherwise exercise more targeted control over all aspects of work and workers' time on and off the job. We have to up our game on this front, with strategies to ensure that we, too, can apply technology smartly to build worker power and worker organization, to improve jobs and working conditions.

We also need to invest in groups like Coworker.org that are harnessing technology to give unorganized workers a platform to share information and mount one-off campaigns targeting discrete practices of specific employers. It is too early to predict whether efforts like these can be brought to scale and transformed into something akin to union representation. For now, however, they provide workers with a voice they previously lacked and provide allies like NELP with access to these workers' stories and their advocacy in support of campaigns to raise wages, strengthen benefits, and improve the quality of work overall.

I close with the hope that in the months and years ahead, we – as a movement of and for workers -- can coalesce around a vision of the future of work and worker organization not unlike that which drove the rise of organized labor in the twentieth century. In this vision, which has united workers in the past and can do so again, all work has dignity, all workers are entitled to dignity and respect, and by acting together, all workers can exercise real and meaningful power in their workplaces, in the economy, and in the nation overall. That is not

only the best way to build an inclusive economy that shares prosperity fairly, rewards work equitably, and extends opportunity to all—it is the only way.



Christine Owens of NELP joins Board member of the Restaurant opportunities Center (ROC) Jessica Wynter Martin, U.S. Secretary of Labor Thomas Perez, and Representative Steny Hoyer on April 21, 2016 in support of efforts to raise the minimum wage in the United States.

https://commons.wikimedia.org/wiki/File:Christine_Owens,_NELP,_Jessica_Wynter_Martin,_Worker,_Sec._Perez,_and_Congressman_Steny_Hoyer,_2016.jpg