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DAVID E. FELLER
MEMORIAL LABOR LAW LECTURE

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The Collective Rights of Immigrant Workers:
Organizing in Difficult Times

Eliseo Medina†

It is an honor for me to be invited to speak at the Fifth Annual David E. Feller Memorial Labor Law Lecture. While I never had the pleasure of getting to know Mr. Feller, I do know him by reputation as a fierce advocate for workers’ rights, and as a legendary attorney who made labor history and labor law. I also know Mr. Feller through my wife, Liza Hirsch Medina, a Boalt Hall alumnus and Mr. Feller’s research assistant in 1977 and 1979. She remembers him as a brilliant attorney, a wise teacher, and a mentor who was never too busy to provide guidance and assistance to young attorneys. His legacy and his work live on through the lives of all those young attorneys who benefited from his wise counsel, in the unions he protected, and in the lives of workers, some who may never have heard of David Feller, but because of him today enjoy a better life.

So again, I want to express my appreciation for allowing me to play a small part in celebrating his life. I’m truly blessed to work with a wonderful group of people who are helping to lead the fight for the working class in

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this country and to work to rebuild the American labor movement during some very difficult and challenging times. Joining us tonight is Mary Kay Henry, SEIU International President, Judy Scott, SEIU General Counsel, and Tom Chabolla, Assistant to the SEIU President. Thank you for being here. I was asked to speak today about the collective rights of immigrant workers and organizing in difficult times.

As you may know, our union—the Service Employees International Union (SEIU)—was founded in 1921 by a group of Eastern European immigrants who were Chicago flat janitors. They took care of the apartment buildings in Chicago. They had to make sure that there was heat in the winter, that the garbage was picked up, that the plumbing worked, that the windows and locks were repaired, and that everything was in working order.

In return, they were paid a miserable wage. They were allowed rooms in the basement of the buildings next to the boilers, and because of their status as employees and immigrants, their children were forbidden to play with the children of the tenants or to be a part of the social life of the building. They were denied not only a living wage and a decent standard of living, but also the most fundamental thing for any human being: respect and dignity. So they decided that the way to change their lives was to organize a union not just in Chicago, but throughout this country. And thus was born the modern SEIU. Those brave janitors began a union that today still has at its core a mission to defend the rights of immigrant workers and to assist them in integrating themselves into our society.

While today’s immigrants come primarily from other parts of the world than those that came here in 1921, they have the same dreams and the same hopes for the future and for themselves and for their children. And like the immigrants of 1921, they are facing some difficult challenges both as workers and as immigrants. Therefore, the question of immigrants and unions is as relevant today as it was in 1921, and I am absolutely convinced that the way for today’s immigrants to claim their little piece of the American dream is to also organize a union.

For me, as an immigrant from Mexico, and as a union representative, organizing immigrant workers and organizing American workers are inextricably linked and cannot be divorced from the huge challenges that are facing all workers in America. These challenges include an economic crisis that has led to mass unemployment, jobs without decent wages or benefits, home foreclosures, lack of decent healthcare, endangered pension plans, and a tax policy that is shifting the tax burden to workers and away from corporations. The crisis has further led to the consequent shredding of the safety net and political and ideological attacks by opportunistic politicians.
We in SEIU know that we cannot fix this broken economy as long as eleven million people are living in the shadows of our society, subject to exploitation and discrimination. We know that we cannot rebuild the middle class or survive as a viable movement as long as we continue to allow the existence of a three-tier workforce in this country—native-born workers, guest workers, and undocumented workers. Each one of these groups has certain rights, but all of them suffer from the same problems faced by every other worker in this country. We also know that we cannot build the power we need as long as we allow ourselves to be divided along the lines of race, occupation, or legal status.

I am convinced that for immigrants to achieve their dreams, they need the labor movement. But I am just as convinced that for the labor movement to achieve its objectives of creating a better life for all workers, their best hope of doing that is by making sure immigrants are part of our labor movement.

Therefore, fixing the economy has to begin with fixing the broken immigration system. But having said that, organizing immigrants into our movement is extremely challenging in these times where the country appears to be veering to the right, becoming more intolerant and less generous or accepting of diversity, where hate as propagated by Fox News and right-wing radio has become acceptable, and where our broken labor laws are used to frustrate, not support, workers in their efforts to form a union. Now we’re seeing this play out in the ongoing political attacks on immigrants and in state laws that criminalizes immigrants.

SB 1070, in Arizona—that legalizes racial profiling and promotes divisiveness—is the prime example of one of those laws. While we were successful in enjoining the implementation of the worst part of the law, the Republican Party has taken SB 1070 national and has produced copycat laws in over twenty-three states in this country.

We are also hearing a lot of hate speech by political leaders, like last year, when a New Mexico congressional candidate proposed to stop immigration by putting land mines along the borders. Or the state representative in Kansas a month ago who remarked that immigrants could be shot from helicopters just like feral pigs. We also heard Congressman King from Iowa propose to keep immigrants out by electrifying the border fences because, in his experience, that had worked with cattle.

We’ve also seen local ordinances introduced to bar rental of housing to undocumented or suspected undocumented immigrants. We have seen proposals to deny access to higher education to undocumented students and to deny driver’s licenses to workers. And now there are proposals to amend the Fourteenth Amendment to the United States Constitution to deny citizenship to children born in this country to at least one undocumented parent. In my opinion, this is a particularly onerous and hateful proposal. It
is one thing to pick on adults, but it is quite another to pick on defenseless children. You would think that people like that would be ashamed of themselves.

I think many of us know these proposals are not serious. But they are designed and used as a wedge issue to incite the conservative base, and they serve to dehumanize immigrants, making it acceptable to objectify, attack, and deny them their basic civil and human rights. As a result, immigrants have been attacked and killed in Arizona, New York, and a number of other states. Inflammatory rhetoric is not heard in a vacuum. Sometimes that rhetoric is heard and acted upon by people who have other issues and problems.

These legislative and verbal attacks are led by politicians who should know better, but are so engrossed in pursuing their political and ideological agenda that they don’t care about the consequences. Or perhaps they believe that immigrant bashing is the path to political power or to advance their particular vision for America. In either case, these attacks breed a nativist agenda that is dangerous for immigrants and to our values as a nation.

To make matters worse, the United States Department of Homeland Security (DHS) has recently embarked on an expanded I-9 workplace audit program to identify workers who are in an undocumented status. For those of you that don’t know, an I-9 audit is when the government goes to an employer to check the payroll records to see if the Social Security numbers being used by those employees are valid and check off against the records of the Social Security Administration. And if they don’t, they are to give those workers an opportunity to fix the problem or they are to be fired. Thousands of workers throughout this country have been fired as a result of these I-9 audits. We, in SEIU, have lost at least 2,000 members in Minnesota, Illinois, and California, and we are bracing for more audits in other states.

The perverse part of this policy is that not only is the federal government not fixing the immigration problem, they’re actually making it worse by focusing on those employers who are doing the right thing by reporting earnings, taxes, and providing Social Security records that they then use for the matches.

Are they focusing on the scumbag employers, those that are paying under the table or are subcontracting to small employers who violate payroll and labor laws? No. These employers are immune to enforcement because they do not provide any Social Security records that can be checked. As a result, these I-9 audits are fueling the growth of the underground economy because clearly, no payroll records means no audits or fines. It’s that simple. There is a competitive advantage for those employers who violate the law without suffering any consequences.
How is this making things better? When you force workers out of their jobs—semi-decent jobs, not anything that they’re going to get rich off of—and you force them to go to a lousy job where they’re going to be working sometimes for less than minimum wage, then you replace them with workers with people in the same situation.

At the same time that these I-9 audits are going on, the DHS has stepped up their deportations of workers that have been arrested. And the DHS is now braggng that they have deported more people than the Bush administration. They claim they’re focused on deporting criminals, but in fact, that’s not the truth. They are deporting mostly people whose only crime is working to support their families. We believe that this is wrong and makes no sense as a public policy. We are working hard to convince the Obama administration that they need to focus on bad-actor employers and on fighting to pass Comprehensive Immigration Reform (CIR), not on making workers’ lives miserable. But unfortunately, the politics of the moment makes this a very difficult time to pass immigration reform.

But we have to keep fighting for it. The problem is not going to solve itself. I believe that it is unacceptable that we, as a nation of immigrants, should have a policy where 300 people die every year in the desert of exposure trying to come to the United States in search of opportunities.

I think it is unacceptable that we should be spending eighteen billion dollars on an enforcement system that is designed to stop farm workers, nannies, factory workers, restaurant workers, and landscapers from coming to America. We ought to be using those resources to stop criminals and drug runners. How does that make sense, to focus on poor workers who just want to come to this country? How does this enforcement policy make sense when we have millions of people living in fear, not knowing when they leave that morning whether or not they’re going to come home again or leave their family unprotected.

This is all going on right now. This is what immigrants are facing. But the same politicians who are attacking immigrants are now pursuing the same agenda against the labor movement. We have seen the Republican governors of Wisconsin and Ohio push and sign legislation to strip public employees of the right to bargain collectively. In other states, Republican governors and legislatures are pushing bills to ban payroll deduction of union dues. They are proposing right-to-work legislation and bills that restrict or ban collective bargaining rights.

This is an all out assault on workplace democracy, and I am convinced that these leaders are doing this because they know that without a union, workers will be defenseless and unable to effectively defend themselves from the corporatization of America. They have driven private sector union density down to seven percent, and they are now working to decimate the public sector union density. I am convinced that they are doing this to have
free rein in the workplace and to stack the deck for the 2012 elections. They know that the labor movement is the strongest independent, best-resourced political force in this country. These conservative forces are looking to either defund us or to force us to spend all of our resources defending ourselves, leaving us without the resources necessary to participate in any meaningful way in the election of 2012.

The stacking of the deck began with a Supreme Court decision called *Citizens United*, and now it is continuing with state actions. I’m convinced that this is the real agenda. Without effective unions, these conservative forces will have full control of the workplace and control of the ballot box. Their goal is, if not to kill unions outright, to at least destroy us as an effective voice for workers. And I believe that Wisconsin and Ohio are just the beginning. If they get away with it there, they will do it in every state. And if they succeed, workers, immigrants, and people who depend on labor to advocate for social policy will pay the price. I fear that if they succeed, America will become a nation run by the corporations, for the corporations, and that there will not be any balance to their extreme agenda.

What I just said to you is basically my belief that immigrants and native-born workers share not only the same dreams, hopes, and aspirations for a better life—we also share the same enemies.

Having said all of this, what is to be done? How do we fight against the Koch brothers, the Wal-Marts, the Chamber of Commerce, the modern-day corporate pirates and their political allies? Are these people so powerful that we should just say our prayers and lay ourselves down to sleep?

Well, hell no. Hell, no. I think that with all of this bad stuff that’s going on, with all of these threats, this is also a time of great opportunities. I think that there’s a movement being born in this country. I’ve been in organizing for forty-five years and let me tell you, I have never seen so much interest from people who want to organize and want to fight back.

When I began to look at when all of this started, I trace it back to 1994. You all remember a governor by the name of Pete Wilson? Pete Wilson proposed Proposition 187 as part of his campaign strategy to demonize immigrants so that he would get re-elected. Proposition 187 would take away public services from immigrants. He thought that that was his ticket to winning a second term. And he was right. He did win a second term.

But what he did not expect was that the immigrant community would respond. There were marches in Los Angeles, 150,000 people strong. People were walking through the streets of Los Angeles saying, “We had enough.” They began to register to vote and turned out to vote en masse against Republican Party candidates.

Then in 2006, we saw massive marches throughout the United States, in over forty states and 123 cities. During a two-day period, over three
million people turned out to march against a proposal by Republican Congressman Sensenbrenner. He had proposed an amendment to criminalize immigrants and anyone who helped them, even family members or the clergy. And you know what was amazing about this march? It’s diversity; it was old and young. It was professionals and blue collar. It was men and women. It was native-born and immigrants. It was business and labor. Community and church groups. Everybody was marching, speaking with one voice. They were saying, “We are workers, we are not criminals, and we will not stand for you criminalizing our community. And today, we march, and tomorrow, we vote.”

The community rallied and organized, and in the next year, 1.2 million immigrants applied for citizenship in the United States. Hundreds of thousands of people registered to vote. And in 2008, ten million Latinos turned out to vote—an increase of two and a half million over the 2004 election. We elected a pro-immigrant president.

Then in 2010, Latinos and immigrants were the firewall that broke the Republican wave that was sweeping the country. We turned out in such great numbers that we voted against anti-immigrant candidates in California, Colorado, Nevada, and Washington State. As a result, the Democrats retained control of the Senate and, in my opinion, helped to blunt the extreme Republican agenda. And here in California, every statewide office was won by the Democrats and seats were added in the legislature.

Today, Pete Wilson’s party is in intensive care, on life support, and is now facing a choice: are they going to change, or die as a viable political force?

I would say to you today that given the results of the census, California is a harbinger of the future and a wake-up call to political parties. Latinos and immigrants will not stand still for being attacked with impunity. Attacking immigrants is not the path to political power; it is the path to political irrelevancy.

But I would also add one thing. I would say to the Democratic Party that they should not sit back and assume that they have the Latino and immigrant vote in their pocket. Support has to be earned; it is not an entitlement. Because at some point, the Republicans are going to wake up to the new demographic realities and they’re going to stop attacking and start wooing Latinos and immigrants as Jed Bush and Karl Rove are counseling. When that happens, Democrats need to have a better story than, “I feel your pain and I’m not a Republican, so vote for me.” That is not going to be something that is going to sell. Support has to be earned.

And while I’m at it, I think that there is also a good policy for labor. We need to be about our members’ interests, not about parties or candidates.
So the immigrant community is on the move, and I’m proud that throughout these efforts, labor has been at their side.

SEIU, the United Food and Commercial Workers International Union (UFCW), the United Farm Workers of America (UFW), the Laborers’ International Union of North America (LiUNA!), and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) have been helping to fund, coordinate, and support these campaigns. As a result, what I’m seeing today is that there’s a bubbling down in that community. There is this hunger for people to participate. They want to be heard and when they see themselves marching—three million strong—and they gain the confidence that they can help drive change.

While we are not there yet, we are growing stronger by the day. I believe that as bad as all these attacks I have just described to you have been for the immigrant community, I believe that we are better off because of those attacks. It has forced a new unity across nationalities, brought forth and trained a new generation of leaders, provided an invaluable education on the importance of political action and organizing, and has expedited the civic integration of today’s immigrants into society. And for that, I thank the very best immigrant organizers in our history: Pete Wilson, Congressman Sensenbrenner, Arizona Maricopa County Sheriff Joe Arpaio, and Arizona Governor Jan Brewer. Thank you, guys, the plaque is in the mail.

The good news is that immigrants are not the only ones on the move. We are also seeing the resurgence of labor in the massive demonstrations at state capitals protesting the anti-labor proposals. Public employees, police officers, firefighters, nurses, factory workers, truck drivers, social workers, janitors, and many others are coming together, fighting together, and creating a new solidarity based on a common struggle against a common enemy. Movements and organizations that in the past have never worked together are beginning to converge to try and figure out strategies to fight and win together. Environmentalists, students, civil rights and community groups, immigrant rights organizations, church leaders, and—would you believe it—even Stephen King have come out to participate in demonstrations in support of workers’ rights. Who would ever have thought it? That many people coming together. Never been seen before, in my memory. We’re all marching and demonstrating and speaking up.

You know it’s a very simple message that we got. We’re saying enough is enough. We’re not going to stand by and allow you to destroy the American dream. This is not who we are in America. We are a nation of immigrants who believe in fair play and rewarding hard work and commitment. We are a nation that believes in workplace democracy and the rights of workers to join together for mutual support and protection. We are a nation that tries hard to live up to the words of liberty and justice for all.
So when I see what’s happening in Wisconsin, when I talk to our members, and when I hear political pundits commenting favorably on unions, I know we’re on the right path. In my over forty-five years as an organizer, I have never seen such widespread enthusiasm, such commitment to a fight, and such honest public debate about unions and the right to organize. I believe that in this environment, many things are now possible. I think that bodes well for immigrants and that bodes well for American workers. Labor is fully committed to win immigrant workers’ rights, and I think that now it is no longer a question of whether we’re going to have immigration reform. It is only a question of when.

I think it is possible to reform our labor laws to make it possible for workers—citizens and undocumented alike—to organize free from intimidation, harassment, and from being fired for their jobs for trying to organize a union. I think you are going to see organizing at a scale that you have never seen before, both of immigrants and native-born workers. We’ve done the hard part. We’ve rocked the car. Now we just got to keep it moving.

These are very difficult but very exciting times. I think that we have a chance to do something big for a change. To win, we’re going to need a whole new generation of organizers and leaders. And yes, we’re also going to need the current and new hell-raising, junkyard-dog lawyers—the next generation of David Fellers, who will help make history, who will develop and make new labor law, who will figure out new and innovative approaches to use the law to empower people, not to limit them.

I started my life working for the farm workers union, and the president of the farm workers union, Cesar Chavez, always reminded us that everything is possible for those that are willing to sacrifice, who believe in themselves, and are committed to social justice. He said that united, there is nothing we cannot accomplish. ¡Si, se puede!

Thank you very much.