Chapter 2

DISTIINGUISHED SPEAKER: ENDURING VALUES AND PERSISTENT PROBLEMS: AMERICAN LABOR LAW TODAY

Wilma Liebman
Chairman, National Labor Relations Board

Introduction:
Hon. John M. True III
Alameda County Superior Court
Oakland, CA

BARRY WINOGRAD: Our introductory speaker, John M. True III—"M." is for Marshall—graduated from the University of California, Berkeley School of Law in 1975. The seventies was a prime period for labor law aficionados at Berkeley—due to the legacy and influence of David Feller as a professor—for me, for John, and for many others.

John was appointed to the bench in Alameda County in 2003. Before taking the bench, he spent approximately 27 years in the practice of labor and employment law, starting in the Bay Area with the National Labor Relations Board (NLRB) and continuing with firms in the Bay Area, most recently with the Leonard Carder labor-side law firm. Many of us in California are familiar with their practice.

John was also an active mediator and arbitrator in employment matters. He served as the chair of the several thousand-member Labor and Employment Law Section of the State Bar of California, and was the chair of the San Francisco Bar Association Labor and Employment Section. He's a man of great, dedicated public service.

In 2001 he was elected a fellow of the College of Labor and Employment Lawyers and, in 2008, was honored with the distinction of being admitted to the American Law Institute.

John has been a frequent writer and speaker on labor and employment topics. He has taught employment law at Berkeley Law and UC Hastings Law School. I will note parenthetically that, in the immediate wake of the *Gilmer* decision in the early 1990s, John and several other individuals in the San Francisco Bay Area pioneered an early version of the Due Process Protocol for employment law disputes, for which we owe him our thanks.

John lives in Berkeley, California, with his wife, Claudia Wilkin, who sits on the U.S. District Court for the Northern District of California. I'm told that they discuss preemption issues and other great questions, and that he doesn't think much of the supremacy clause.

John is a proud father of four children and the happy grandfather of Jackson Robert True, now six, and Leila Phoebe Kline, now three.

John, thank you very much for honoring us with your introduction for Wilma Liebman.

JOHN TRUE: Thank you, Barry. And thank you, Chairman Liebman, for taking this serious risk to your reputation by agreeing to have me introduce you to the National Academy of Arbitrators today. And finally, thank you, members of the Academy, for honoring this woman who is nothing less than a national treasure.

It is customary, I believe, when introducing a person of the stature of our distinguished speaker, to search among her writings, her speeches, the cases she has decided or helped to decide, her dissents—and she has authored many of those in the past years—and her voluminous other published materials to find the pivotal, thematic example of her contributions to the jurisprudence she has been so instrumental in creating.

I have done this.

And my search led me far back in Chairman Liebman's career to a case in which she was involved and which, I contend, did nothing less than change the course of labor history. By way of full disclosure, I will tell you that I was involved in this case as well. But as you will see, I can claim to be nothing more than a bystander.

The case was one of the Chairman's first. She and I were relatively new attorneys at the labor relations board. We were working out of Oakland's Region 32 Office of the General Counsel. As I was just a bit senior to Wilma, I was asked to second chair her first trial. It was an unfair labor case alleging, as I recall, violations of Section 8(a)(1) of the National Labor Relations Act (NLRA). The respondent was the mighty Gen-

eral Motors Corporation which, at the time—this is back in 1978–79—had an assembly plant in Fremont, California.

Here is the key passage from the reporter's transcript of this case. Chairman Liebman was counsel for the General Counsel.

(Question by respondent's attorney cross-examining the charging party): Isn't it true that you were heard to advocate the violent overthrow of the United States government in the company parking lot?

MS. LIEBMAN: I object, Your Honor.

THE COURT: On what grounds please?

MS. LIEBMAN TO MR. TRUE *SOTTO VOCE:* What do I say?

MR. TRUE TO MS. LIEBMAN (again whispered): I don't know. Think of something.

MS. LIEBMAN: Your Honor, the question is compound, complex, vague, incompetent, irrelevant, overbroad, assumes facts not in evidence, immaterial, calls for speculation, and lacks foundation. Moreover, it's unfair and it strikes at the heart of the witness' rights under Section 7 of the Act.

THE COURT: Anything else?

MS. LIEBMAN: I guess that's it, Your Honor.

THE COURT: The objection is sustained.

And there you have it. Labor law has never been the same since. How so? A moment's thought gives us the answer. On the one hand, Ms. Liebman is now the chairman of our country's agency in charge of regulating private sector labor relations. On the other hand, not that long after this momentous exchange between counsel for the General Counsel and the respondent, the General Motors Corporation went bankrupt.

Causation a little tenuous, you say? Think about which president it was who demanded the head of the chair of GM on a platter a few years ago. And which president it was who, as one of his first acts in office, appointed our speaker to lead the NLRB. *Quod erat demonstrandum.*

In all seriousness, it is with great, great pleasure that I have the privilege of introducing to you a remarkable figure in our contemporary labor relations, NLRB Chairman Wilma Liebman.

A quick summary of her career. In 1979, she won the 8(a)(1) case of which I speak. And, the General Motors Corporation had to post a notice to its employees promising not to violate the Act in the future. That was, of course, the beginning of the end for the corporation. Then, as if that were not enough, Wilma went on to a labor law career of great distinction. After leaving the General

Counsel's Office of the Board, she joined the General Counsel's Office of the International Brotherhood of Teamsters in Washington, D.C., where she spent nine years. She then went on to become Labor Counsel to the Bricklayers and Allied Craftsmen, where she worked from 1990 to 1993.

In 1994, Wilma joined the Federal Mediation and Conciliation Service, first as a Special Assistant to the agency's Director, then as its Deputy Director. In both capacities, Wilma was asked to exercise significant leadership on issues at the heart of labor and employment law, as it was then developing—issues which I know to be of great interest to the National Academy of Arbitrators—including the appropriateness of mandatory arbitration in employment disputes in the nonunion sector.

Chairman Liebman's talent, skill, and commitment to workplace issues have been recognized by her peers. She has served as an elected member of the Executive Board of the Industrial Relations Research Association, she is currently a Fellow of the College of Labor and Employment Lawyers, and she is also a member of the American Law Institute.

Chairman Liebman's talent, skill, and commitment to workplace issues have also been recognized by no less than three of our last three presidents. She was appointed to be a member of the National Labor Relations Board by President Clinton and was confirmed by the Senate in November 1997. President George W. Bush reappointed her twice. She was reconfirmed by the Senate two more times.

Hidden beneath the surface of this record of bipartisan support for our speaker is the unhappy fact that she has served the NLRB through some extremely difficult times, as evidenced by the following: She has been a member of the NLRB when it has had five members, four members, three members, two members, and, yes, one member—herself. Throughout this long and trying period, when the Board's relevance was and is being widely questioned and when politically motivated *ad hominem* attacks have been increasingly common, Wilma has been a calm, thoughtful spokesperson for the importance of the Board and for labor law in the workplace.

Speaking of attacks, I recall with great pleasure showing my employment law students a Sean Hannity clip a few years ago, when Wilma was visiting our class. In that clip, Mr. Hannity railed loudly about her so-called collectivist view of workplace rights. He

did call her "cuddly," however. And, I'll leave it to Wilma to say whether she takes that as a compliment.

Her current term expires in August of this year (2011). That's the bad news. The good news is that, as I said, President Obama asked her, and she agreed, to lead the Board as its Chairman, a position that she now holds. For those of you who are wondering about the usage of "chairman" to refer to a female, it is the Board's inflexible tradition, Wilma tells me, to use that term. So, I'm not being politically incorrect.

The summary of her distinguished career I have just given you is deficient in two ways. First, it leaves out, as it must for reasons of time, many of her other significant accomplishments. More important, I have omitted reference to Wilma's qualities as a thinker about the workplace issues of our time.

As Barry has told you, I have had the pleasure of Wilma's presence in my employment law class on many occasions. Those occasions have given me the opportunity to see her as one of the people who is the most thoughtful and concerned about the developing law of the workplace. She's lectured my students on the meaning of Section 7 of the NLRA in the nonunion workplace and, when she has come to the Berkeley campus, she has unfailingly taken the time—at the request of Boalt's *Berkeley Journal of Employment and Labor Law*, for which she is an advisor—to give a lunchtime address on labor law issues to interested students.

Students love her. They love her straightforward, unassuming, accessible style. They love hearing such an important person give honest and informed opinions about the issues that pervade our workplace today. They love her quiet wit, charm, and modesty. She would make a wonderful professor.

Finally, this introduction must include reference to Wilma's place in my life, and that of my family. She has been a great friend to all of us—to me in spite of my lack of assistance to her in her first case, to my wife and to our children over the course of many, many years. We look forward to a continued close relationship with her, wherever her path may lead after August.

Members of the Academy, it is with great pleasure that I give you Wilma B. Liebman, Chairman of the National Labor Relations Board.

WILMA LIEBMAN: Thank you, all, very, very much. Thank you, to my very good friend, John True, for that incredibly generous introduction. You overwhelmed me a little bit. But, I didn't realize

what a storyteller you are. When I think back on that trial, I shudder a little bit. It must amaze you that I ended up a member of the Board, let alone Chairman, given my performance at that first trial. But, because of your good mentoring, I guess I had a future. So, thank you very much.

I also want to acknowledge my very good friend and former colleague, Vella Traynham, who was honored here yesterday. Vella is truly salt of the earth, and like John True, the best friend that you could have.

I thank the Academy for honoring Vella. It was truly well deserved. And I thank the Academy for the opportunity to be here, and to talk to all of you. I particularly thank you because I believe I stood you up last year. You had invited me to be on the program in Philadelphia but then I received a belated invitation to join what I believe was the first official "dialogue" with the Chinese about labor issues. On short notice, you very graciously excused me from the appearance last year. So, I'm pleased to have a return opportunity.

One last personal note—I noticed that in 2000, my former colleague and very dear friend John Truesdale gave the National Academy's distinguished lecture. I spoke with him just the other day and told him that I was attending this meeting. He asked that I please send his good wishes to everybody. He wishes that he could have been here today.

I will now turn to the topic of my remarks, which I have entitled "Enduring Values and Persistent Problems: American Labor Law Today." To some extent, my thinking about the notion of enduring values was triggered by my participation in the labor dialogue with the Chinese last year. Because in preparing to talk to people in China about American labor law, I realized that I was focusing on the very basics or essence of this law, by looking at what its values are. My thinking about "persistent problems" is obviously a function of what we've been living through for the last year or so.

Let me begin with persistent problems. Earlier this week, I received a handwritten envelope that I opened a little nervously, because of some of the mail we've been receiving lately. Inside the envelope was a torn copy of a newspaper page with a column written by George Will about two weeks earlier, criticizing the NLRB case against Boeing. At the top of the page, the sender had written, "Withdraw the Complaint against Boeing, you partisan, progressive, Marxist moron."

Earlier in the week, the *Wall Street Journal* had an editorial about a concurring opinion that I had just written, having to do with turning over information to a union in a plant relocation situation. The concurrence agreed that, under existing law, there was no duty to provide the information, but it suggested a revised legal framework for analyzing relocation cases that would encourage the sharing of information in order to encourage more constructive collective bargaining. The *Wall Street Journal* blasted that opinion, complaining that I advocated bringing unions into corporate boardrooms. Another article, taking off from the *Journal* editorial, concluded that Leon Trotsky would be very happy with President Obama's NLRB.

I see headlines about the Board like "Marxism on the March" and, as John True mentioned, Sean Hannity's depiction of the newly appointed NLRB Chairman as a "cuddly collectivist." I mention these not simply to try to be amusing, but to demonstrate that this outmoded vocabulary has returned, and reflects the profound divide that exists around this country on labor law issues today, and the escalating controversy of the last few years. Obviously, the events in Wisconsin and around the states and what's going on with the NLRB on Capitol Hill expose very passionate views over issues of labor law. This ongoing and accelerating controversy is one of the persistent problems, one of the persistent challenges, that we face in trying to achieve a fair national labor policy.

Last year was clearly a year of significant events for anyone interested in labor law and labor policy. It was, first of all, the year that the NLRB celebrated its 75th anniversary.

To mark the event, we sponsored a symposium with George Washington University Law School last fall. Some very interesting papers were submitted, which are going to be published very soon by the *ABA Journal of Labor and Employment Law*, co-edited by Laura Cooper and Steve Befort. We are most grateful to them for that. One of the participants was Richard Freeman, the Harvard University labor economist. In his paper, he wrote, "It is perhaps harsh and impolitic at the NLRA's 75th birthday to declare that in 2010 the law no longer fits American economic reality, and has become an anachronism irrelevant for most workers and firms. But, that is the case." Now, as we look back at how events unfolded since the fall of 2010, the battle today seems to be one not strictly for relevance, but a more existential battle for survival.

During 2009–2010, the political storm escalated over the Employee Free Choice Act (EFCA), the first real attempt to amend

the labor law in 30 years. Ultimately the legislation stalled in the Congress. Also in 2009–2010, President Obama's nomination to the Board of Craig Becker, a former union lawyer and a former academic, erupted in controversy as the nomination became part of the battle over the Employee Free Choice Act, and ended up in January 2010 in a threatened filibuster and a failed cloture vote.

In April a year ago, the Board was reconstituted with recess appointments made by President Obama of Democrats Craig Becker and Mark Pearce, after a 27-month period of just two board members: myself and Republican Peter Schaumber. These recess appointments generated political heat and, in June, the Senate confirmed Mark Pearce and Republican nominee Brian Hayes, after Senate Republicans threatened not to act on dozens of other nominees unless these two were confirmed.

We also saw, last June, the Supreme Court rule in a 5-4 decision that the nearly 600 decisions issued by the two-member board between January 2008 and April 2010 were not valid because the Board was not authorized to issue decisions with only two Board members.

Last summer, after a full quorum returned to the Board, the Board dealt with the aftermath of the Supreme Court's decision (by issuing new decisions in about 120 cases that were returned to the Board by the courts of appeals) and also turned to cases that had languished for years. Many of these were divided decisions and some added to the ongoing political controversy.

Perhaps most remarkable to me was that some of the loudest controversy was created by the Board merely seeking briefing on several issues, including one case called *Specialty Health Care*, which involved an attempt to unionize by certified nursing assistants (CNAs) employed by a nursing home. The issue presented was whether the CNAs alone constituted an appropriate bargaining unit, apart from other job classifications. The Board sought briefing on experience in the non-acute health care industry, which has changed so much over the last 20 years. We asked a series of questions, most of which were directed at the nursing home industry, but a couple were directed more broadly at appropriate bargaining units in general. The sole Republican member of the Board dissented vigorously from the request for briefing, which triggered a political firestorm. The case is now the subject of oversight requests from the Congress, which is seeking to obtain the Board's deliberative documents. That oversight battle continues and adds to the overall controversy.

The battle then moved to the Board's 2011 budget, when 176 members of Congress voted to de-fund the agency entirely. One hundred seventy-six, that's a majority of the majority in the House of Representatives who voted to de-fund the agency based on an amendment sponsored by a Georgia Congressman who said that this New Deal relic no longer needs to exist. In the end, we weathered the budget battle for fiscal year 2011, but it is fair to say that the controversy is escalating, and that we are certainly in the eye of a political storm right now.

This storm had been gathering for some time. I look at September 2007 as a plausible starting point. That was close to the end of the Bush-era Board majority, when the Board issued 60-some decisions, each of them divided, that the labor movement condemned as the "September Massacre." This led then to protests outside of our headquarters, congressional hearings in December 2007, and scrutiny of those decisions. At the end of December 2007, the Board went down to just two members, as the Chairman's term expired and two recess appointments (one Democratic and one Republican) came to an end.

To me, the two-member Board is the most obvious legacy of the Bush-era Board and the deeply divided decisions that were issued, the controversy within the Board, and the controversy about the Board during that period. In early 2008, President Bush made nominations to fill the three Board seat vacancies, but they stalled in the Congress. You may remember that, by that time, the Senate was majority Democratic. During the last year of the Bush presidency, the Senate never went out in recess, which precluded President Bush from making recess appointments to the Board or other agencies. So, we remained a two-member Board. And, that continued through the first year of President Obama's presidency, until April of last year (2010), for 27 months in total.

After President Obama was elected, there were great hopes—and also great fears—about what a newly constituted Obama Board would do. The Employee Free Choice Act was reintroduced in the Congress. By this point, the country had sunk into an economic crisis. In March 2009, right after the Employee Free Choice Act was reintroduced, the Washington Post published a very interesting story analyzing what was going on. The columnist pointed out that everyone expected that the Employee Free Choice Act would be a battle between business and labor. But, because the fight landed right in the middle of the economic crisis, he wrote, the debate was ratcheted up and was now about the fundamentals

of American capitalism. He predicted that, because the rhetoric was so overheated, it was hard to imagine the two sides ever reaching a compromise. That was in March 2009. Needless to say, that turned out to be accurate. And, as I mentioned, the controversy over EFCA spilled over to the nomination of Board member Craig Becker.

Both organized labor and business spent tens of millions of dollars trying to convince the public and the Congress of their respective positions on the proposed legislation. It was expected that the Employee Free Choice Act would be a legislative priority. But, it took second place, at best, to the health care legislation. You'll remember that, during 2009, Senator Kennedy died. After that, when Scott Brown was elected to fill the seat, he announced that he was coming to Washington early to be sworn in so that he could vote against the nomination of Craig Becker. At that point, the Democrats no longer had a 60-vote majority. At that point, the Employee Free Choice Act was stalled.

In a nutshell, this is the narrative of the escalating controversy of the last few years. These events—our oversight by Congress, our difficulties with Congress on the budget, and what's going on in some of the states over public sector collective bargaining rights—demonstrate a profound social divide in our country over these issues. This divide is no doubt exacerbated by the economic crisis, which has created fiscal constraints. In turn, that has led to partisan arguments about worker rights and benefits, to finger pointing and resentments, and to inflamed societal conflict over these issues.

It's become apparent, I think, that where you stand on questions of labor law and policy depends, in the end, on what you think about more fundamental questions, namely, questions of values: social, political, and moral values that inform or should inform our policies and debates about these policies. Values-driven conflict arises from values differences and, by that, I don't mean simply differences of opinion. But rather, differences that arise from asymmetrical worldviews or diverging social realities, including competing views of both the present and history. Certainly, competing views of the present and history were demonstrable in the debate over the Employee Free Choice Act, with conflicting views about both the causes of the current economic crisis and the effects of the Depression-era National Labor Relations Act. Of course, if there are no common values, if values are in conflict, it makes reaching compromise or finding solutions very difficult.

Current labor law is widely viewed as being in decline. It's been viewed that way for several decades. The last significant revision to this law was in 1947. But while most seem to agree that the law is outdated and warrants a renewed conversation, beyond that there is really very little consensus. There are those who value this law and see it as critical to a democracy and to a sustainable economic recovery. But, they bemoan its ability to protect worker rights in the face of employer resistance and workplace change, which has been driven by competitive pressures. For them, the law no longer delivers on its promise and they believe revitalization is essential. They see the Act's election procedures, in particular, as no longer working to guarantee the right of workers to organize. Some unions bypass the Board's elections procedures entirely. For these people, the NLRB no longer has their confidence. It is hard to convey to them the notion of a law that works.

On the other side, there are those who think that the law is a relic of an earlier era, that collective bargaining exacerbates joblessness, and does not fit in a competitive, free market economy. They believe that the law is no longer essential because workers have an array of other legal protections. Some in the business community and the legal establishment may never have accepted this law as legitimate in the first place. For these people, the NLRB has never had their confidence.

This lack of consensus and lack of confidence is a persistent problem.

There's also disagreement about what the purpose of this statute actually is. Ever since the 1947 Taft-Hartley amendments refashioned labor law, the Board has struggled to reconcile two statutory goals that are sometimes in tension, namely, the Act's overall stated purpose to promote collective bargaining and the basic goal to preserve employee free choice. After the 1947 amendments, employee freedom of choice has been defined to include not only the right to engage in union activities, but also the right to refrain, and the right to reject union representation in favor of dealing with employers individually. As a result, some believe that our national labor policy is at cross-purposes with itself. Cornell University professor James Gross has written about this. Some have suggested that the homogenization of the Wagner Act and the Taft-Hartley Act has saddled the Board with the duty of administering a law that sets forth contradictory, and, in some ways, irreconcilable purposes.

There are also persistent challenges that are posed because the law has been so resistant to legislative change for so long. Law professor James Brudney has written that the labor law has not been amended since the interstate highway system was created, since Jackie Robinson integrated baseball, and since television entered American homes. But, that's the fact.

As a result of the failure to amend or update the law, there are persistent difficulties in trying to adapt the law to very changing economic and workplace realities. Even this, itself, is the subject of great controversy, and often divided the Board during the Bush era. We disagreed not only on what the law is or what policy preferences should be, but also over legal methodology and judicial philosophy: Does the Board have a right to adapt the law? Or, is the law static? Do you interpret the law by looking at dictionaries or do you interpret the law by looking at real world consequences? These questions were the subject of many disagreements among the members of the Board during the Bush era, but were particularly obvious in cases involving the coverage provisions of the Act: Who is an employee? Who is a supervisor excluded from coverage of the Act? Who is an independent contractor excluded from coverage? These issues have become much more real as competitive pressures caused businesses to seek flexibility and alter employment relationships, relying more heavily on alternative or mediated employment relationships. These workplace changes have made meaningfully enforcing the law very challenging. That's another persistent problem that we face.

The last persistent problem that I will mention is the increasing lack of familiarity with this law and its protections, with the history of this law, with the role of collective bargaining, and with the role of trade unions in our society. As union density has declined, fewer and fewer people know what the law means or know what collective bargaining is, let alone the contribution it made to a fair economy. This includes particularly young people in the workplace—both employees and employers—but also members of the judiciary. Judges are more familiar with the array of other employment laws that have been enacted and less and less familiar with collective bargaining or collective rights under this statute.

Perhaps the events of the last few months have served to increase awareness about this law and collective bargaining to some extent. Between what's gone on in Wisconsin, the football labor dispute, and now the basketball dispute, I think you'd have to be half asleep not to have at least heard the words "collective bargaining."

Certainly, the controversy over the Boeing case has brought to the public eye some of these concepts.

A few months ago, the Board's General Counsel issued a complaint involving someone who was fired for a communication on Facebook. That case got a lot of attention. I thought it was quite remarkable to have a General Counsel of the NLRB on *Fox News* talking about protected concerted activity.

These, in my view, are some of the persistent problems that we face. The escalating controversy, the absence of consensus, the resistance to legislative change, and the lack of familiarity are problems that make it very hard for the Board—or challenge the Board—in trying to implement a fair and realistic national labor policy. But, we don't need consensus in order to have enduring values. And, I do think there are enduring values.

Yesterday, in his talk, Gil Vernon identified the values that he saw in collective bargaining. When I prepared for this talk, I organized the enduring values that I perceived into four categories.

First, the rule of law. This statute was remarkable in substituting a rule of law—a system of governance—for bitter disputes that had existed before its enactment over the refusal of employers to deal with unions. Many of these disputes went on unresolved for decades. Many of them were violent. The rule of law that the statute provided totally transformed how those kinds of disputes were resolved.

Second, freedom of association—the right of working people to come together and to have a voice in the workplace; the Progressive-era notion that industrial democracy is basic to a political democracy.

Third would relate to what President Roosevelt said when he signed the Wagner Act in 1935: this Act was necessary as a matter of "common justice and economic advance." People sometimes forget that this law was enacted in an effort to restore the nation to prosperity by allowing workers to bargain collectively with their employers. The notion was that equalizing bargaining power between workers and business through collective bargaining would, in turn, increase the purchasing power of workers, which would, in turn, restore the nation to prosperity. In some ways, I think that this law was pro business. It's hard for people to see it that way, but it was enacted less as a favor to labor than to save capitalism from itself.

Economic advance through equality of bargaining power is therefore another enduring value under this statute. Related to that, of course, is the opportunity through collective bargaining for labor and business to come together not only to distribute wealth but to come up with their own solutions in response to changing economic circumstances—the opportunity to manage change, the opportunity to innovate. Certainly, the Kaiser Permanente partnership with its unions is an ideal example of that.

This leads to the fourth enduring value that I would mention—and one that is particularly of importance to this group—namely, the private system of workplace governance and dispute resolution that has arisen under this statute. Instead of government mandates, labor and business work out their own solutions through collective bargaining. The systems of dispute resolution that have been negotiated and put in place provide a measure of order to countless workplaces. The processes that have been developed have had an impact on other forms of dispute resolution in our society, both employment-based and broader, and in that sense have perhaps been the clearest legacy of our labor law regime.

All of these values, of course, are interconnected. They all relate to fairness. They all relate to social stability. Without any one of them, we would not have the social stability that we have seen over the last seven decades. And, just because there is no consensus about them does not mean that they don't endure.

I have spoken about persistent problems, and enduring values, but where does that take us? No one really knows where we're headed with labor policy at the moment. Some believe that this is an existential moment where there is a real threat to the survival of labor law and collective bargaining rights. *New York Times* reporter Steve Greenhouse quoted Berkeley professor Harley Shaiken as saying, "No one really knows whether this is D-Day or Dunkirk."

But, I think we may have an opportunity. It's regrettable that the discourse is so rancorous. It is regrettable that worker rights are so much the subject of partisan divide, because there are opportunities, clearly, for cooperation through realism and dialogue. My hope is that one day this rancor will turn into a sober dialogue.

Let me conclude by making a strong statement of my own beliefs. As long as I remain Chairman of this Board, I will remain firmly committed to preserving these enduring values and to a vigorous and, I hope, fair application of these values. Labor law still matters. It matters to our economy. It matters to our democracy. It is a form of access to justice for workers. And it enables labor and

business to reach their own solutions in response to changing economic conditions. The NLRB has weathered existential threats in the past. My guess is that we will again weather these attacks and endure.

I thank you for having me here today and for the opportunity to be with you.