

Fighting for Basic Human Rights in the Workplace: A Conversation with Lewis Maltby

by James M. Maloney

Lewis Maltby is the President of the National Workrights Institute, Inc. (NWI), a non-profit research and education organization dedicated to advancing human rights in the American workplace. Since its inception, the Institute has been regularly consulted by Congress, state legislatures, the media, and other civil rights organizations. Mr. Maltby began his legal career as a Philadelphia public defender after graduating the University of Pennsylvania Law School in 1972. He has served as Executive Vice President and General Counsel for an engineering firm, and later as the Director of the American Civil Liberties Union's National Taskforce on Civil Liberties in the Workplace. Mr. Maltby has published numerous scholarly articles on employment law and workplace rights, and has personally testified before various House and Senate Subcommittees and before the legislatures of eight states on workplace rights issues. On July 21, 2003, James Maloney talked with Lewis Maltby at NWI's headquarters in Princeton, New Jersey.

Q: I understand that the National Workrights Institute was founded in January 2000 by the former staff of the American Civil Liberties Union's National Taskforce on Civil Liberties in the Workplace, which you headed. Why did you start your work in the area of human rights in the workplace with the ACLU and why did you leave the ACLU to create NWI?

LM: We started with the ACLU in 1989 because the ACLU was, first of all, an organization I was already part of, as a very active volunteer leader, and secondly because the ACLU was the only organization at that time that could see that human rights needed to be extended into the world of work. Most people just couldn't see it. Ira Glasser had that vision, so we started with the ACLU. But over time, a natural evolution takes place. The staff that has the specific issues develops their own positions on those issues and their own strategies. The more that happens, the more those positions and strategies start sticking out from underneath the corporate umbrella. Eventually you have so much that's outside the umbrella and so little that's left inside the umbrella that you have to say goodbye, shake hands, and become independent. There's only a certain amount of dissonance that can be tolerated if you are to have things still work properly.

Q: What sorts of issues gave rise to that dissonance?

LM: The biggest issue for us was the globalization of the economy. I look at the globalization of the economy as *the* workplace human rights issue of my lifetime. Just as we went from state laws about employment rights in this country to national laws as we went from a state to a national economy, so we have to do the same as we go from national economies to a global economy. A state law about an employment right today isn't terribly valuable because an employer can just go from State A to State B and legal protection disappears. We need to have national laws in the U.S., and have had some for some time. But when companies can hopscotch around the world in the blink of an eye, national laws aren't very effective, and it progressively does less and less good to have national laws. We need *international* laws that protect fundamental human rights on the job. Helping to make the transition from national laws to international laws is the most important thing that someone in my position can do. Unfortunately, I was unable to persuade the leadership of the ACLU that that was part of workplace civil liberties. The ACLU, to its credit, is scrupulously careful not to wander all over the political landscape grabbing issues that sound good. Before the ACLU gets involved in any issue, there is a very serious in-depth analysis of whether or not it really is a civil liberties issue. That's how it should be. I was unable to persuade the national leadership of the ACLU that globalization of workplace rights was really a civil liberties issue. So, as much as I love and

reverse the ACLU, I felt there was no choice but to spin off and become independent because we couldn't sit there sucking our thumbs while the issue of our time went on without us.

Q: Did part of the difficulty in getting the ACLU interested in globalization issues, and even in workplace issues at all, derive from the “state action” issue, by which I mean the American constitutional notion that civil rights exist against government but not against private entities such as corporations?

LM: The state action issue was a very big issue in persuading the ACLU to get involved in workplace rights issues. The big debate that was going on in the ACLU in the late 1980s was whether or not there needed to be a constitutional violation, which requires a governmental entity depriving the individual of some right, in order for the ACLU to get involved, or whether the ACLU's mission was to protect the *values* embodied in the Constitution. Finally, the ACLU embraced the idea that if someone's civil liberties are being violated, it doesn't matter who's violating them. For example, it doesn't matter whether it's General Motors or the Attorney General doing censoring. Either way, censorship is a violation of civil liberties, and it's the ACLU's mission to stop it. That was an issue in the beginning, but that had to be resolved before my group at the ACLU could even be created. That was a major organizational step for the ACLU, to say that they were going to protect things that were not expressly protected by the Constitution. But then for me to say now we had to take another huge step on top of the first step by addressing globalization, it was just too much. Organizations can't turn on a dime, and what I needed to do was more than the ACLU could reasonably be expected to let me do, so we had to say goodbye.

Q: I can see how globalization would create new possibilities for abuse of rights in the workplace when companies can move their production to nations with lesser protections, but most industrialized democracies do a better job of protecting workplace rights than does the U.S. Why do you think that protection of workplace rights is so inadequate here?

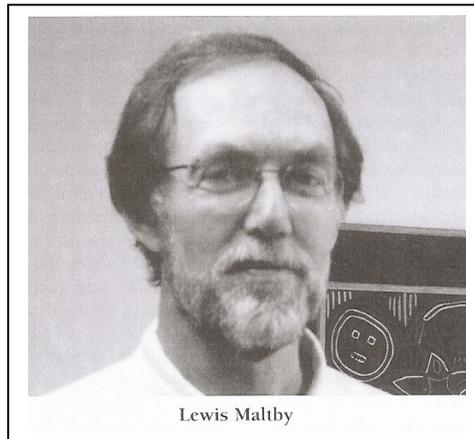
LM: It's really a paradox. The United States virtually created the concept of human rights and has done, notwithstanding current activity by the Bush administration, a very good job of protecting those rights. In how many countries could you stand up and say that the chief executive of the country is a horse's ass and not get punished? But you could do it here without the slightest fear. Yet we deliberately fail to protect the same rights in the workplace. It's almost schizophrenic. The reason we fail to protect our rights at work is because we collectively have some serious misconceptions about what protecting human rights in the workplace would mean. The first misconception is that protecting human rights in the workplace is inconsistent with the functioning of a market economy. Many Americans think that you have to let employers do whatever they want to do or otherwise it's socialism. But that's not true. The way a market economy works is that private actors are supposed to be able to make *resource-allocation* decisions without the government looking over their shoulders. Employers should be allowed to decide how many widgets they're going to make, what kind of widgets they're going to make, where their factory is going to be, what wages they're going to offer the widget-makers, and how many widget-makers they need to hire. The government in a free-market economy really shouldn't get involved in those kinds of decisions. But that has nothing to do with human rights. An employer can make *all* the resource-allocation decisions it wants based on its own best judgments without censoring the employees and firing those who have a private political opinion the boss doesn't like. An employer's rights are not being interfered with when the government says, “You can put your factory anywhere you want to, but you can't tell your employees what to do in their private lives.” We're very protective of the entrepreneur and of the market economy in the United States. It's part of our national belief system. But we don't collectively understand that we can honor that belief system and still protect human rights. We don't understand the difference between a resource-allocation decision and a rights decision. The second misconception, which is related to the first one, is that if we extend human rights into the workplace, that our standard of living will suffer. We look at what we have and we see that, even with current economic conditions, the average person in America lives extremely well compared to almost anyone else in the world at any time in history. Notwithstanding all our economic problems and our misdistribution of income and wealth, the standard of living in this country is probably the greatest that's ever existed in human history, and nobody wants to lose it. People are afraid that if we protect human rights in the workplace it will hurt productivity, and our standard of living will go down.

Q: But isn't a worker who is happier about the relationship with his or her employer likely to be a better worker, thereby increasing productivity?

LM: Absolutely. If you look at companies, and there are some, that voluntarily do a good job of protecting human rights, you'll see that they not only don't go out of business, they make *more* money than their oppressive competitors. Unfortunately, it's something that's not understood widely enough in America. We don't understand that we don't have to choose between a good standard of living and protecting human rights at work. We think that we have to give one up to get the other. It's a tragic mistake.

Q: What do you think is the source of this misunderstanding?

LM: Most Americans confuse protecting human rights in the workplace with socialism. And history has shown that a market economy does a better job of producing goods and services than does a government-controlled economy. So everyone is very careful to protect the market economy, and that's good. But people don't understand that protecting your right to free speech from violation by your employer has nothing to do with socialism and doesn't threaten the market economy. Having a market economy does not mean turning corporations into banana republics whose only law is the whim of the current CEO.



Q: You've mentioned free speech as one of the fundamental human rights that NWI is trying to protect in the workplace. What are some of NWI's other areas of concern, on which issues is NWI focusing its energies, and how and why were these issues targeted?

LM: We have a very specific method for choosing the issues on which we get involved, and it's keyed to our strengths and our limitations. We're a small organization, we don't have an army of staff, but we have a lot of expertise. We are best able to focus our attention on emerging issues that haven't yet been recognized or, if they have been recognized, haven't really been thought through. It's our job to be a pioneer. For example, the Institute doesn't focus a great deal on racial discrimination. The law is clear, everyone knows what they're not supposed to do, and it's basically a job of enforcement. The EEOC has hundreds of times more staff than we do. The Institute can't add a great deal of value to the effort of preventing and remedying racial discrimination. Where we can contribute is on an issue like genetic discrimination, which hasn't been resolved yet, even on paper. Genetic discrimination isn't even happening to a large extent yet. Most people who are aware and concerned don't know what to do about it. Coming up with a proper analysis of the problem of genetic discrimination, how it can best be addressed, that's a job for us, that's a job for a small group of people with expertise. It doesn't take a lot of resources to think through a problem. So the Institute tries to focus on emerging issues that have yet to be fully analyzed and understood. That's where we make our contribution.

Q: Besides genetic discrimination, which I'd like to get back to in a moment, what are some of the other new and emerging issues that are arising in the workplace as a result of technological advancements?

LM: Another very big issue for us is electronic surveillance. The FBI can't listen to your telephone conversations or read your e-mail without a court order, and when the government tried to set up its "carnivore" system to systematically read everyone's e-mail, the country went ballistic. But all of that happens in the workplace. Your boss probably reads your e-mail. Your boss probably listens to many of your phone calls. Your boss probably checks every website you visit. Over 80% of all employers in America today conduct electronic surveillance of employees. They don't need to have a court order for any of it, and most of the time it's done in secret. There's virtually no right of privacy in the workplace today, and with the electronic technology that's available to the boss to conduct surveillance, it's not just a theoretical lack of privacy, it's a *real* lack of privacy. If you write your spouse a romantic e-mail message while you're eating lunch at your desk on the afternoon of your anniversary, there's a good chance that your boss or one of the

computer jocks will read that message. It's totally unrelated to work, it's none of their damned business, and they read it anyway. This happens every day, and someone's got to do something about it.

Q: Speaking of doing something about it, I understand that NWI has worked on drafting and trying to gain passage of the Notice of Electronic Monitoring Act, better known as NEMA. Can you tell me something about the key provisions of NEMA and where it stands?

LM: NEMA represents the most basic protection of the basic right of workplace privacy. The least an employer can do if they're going to conduct electronic monitoring is tell employees that they're doing it. Believe it or not, that doesn't happen very often. There are substantial numbers of employers that conduct electronic monitoring programs and have not told the employees one word about it. Employees are sending e-mail messages to their doctors and their priests and their spouses, thinking their message are private, but the employer is reading them without the employees having any idea that it's going on. In many more companies, the employer sends out a notice, or puts a notice on the computer screen that says, "This is a company-owned system. We reserve the right to monitor." What does that mean? Is it e-mail that's being monitored? Is it web access? Is it the contents of the hard drive? Telephone communications? The employees don't have a clue because the employer didn't tell them. Are messages being monitored on an as-needed basis? Randomly? Is every single message being monitored? The employees don't know. Employees don't even know whether monitoring is actually taking place, only that the employer "reserves the right" to monitor. The so-called notice that most employers give is no notice at all. It's a reservation of rights that protects the employer's legal ability to do whatever it wants. It's not intended to communicate anything to employees, and it doesn't. What NEMA would do is to require employers to give genuine, detailed, specific notice to the employees of each and every monitoring program that it conducts. It wouldn't prevent abusive monitoring by employers, but at least employees would know what was going on. That's a big first step in the right direction.

Q: How far along is NEMA toward its passage?

LM: NEMA was originally introduced in the summer of 2001. It was doing extremely well until 9/11. After that, like a hundred other legislative initiatives, was shoved on the back burner because the country was totally focused on security concerns. Before that, NEMA had bipartisan support that is virtually unprecedented. When Senator Schumer held his press conference introducing NEMA, I was standing on his right. Bob Barr was standing on his left, and the ACLU was standing next to Bob Barr. I have never seen Bob Barr, the ACLU and Chuck Schumer agree on anything before, but they agreed on this. We had had discussions with the business community, mostly regarding drafting, and they seemed satisfied that we were addressing their legitimate concerns. The bill was looking extremely well until the world turned upside down. Now that NEMA is about to be introduced again, I'm optimistic. But the piece that's missing is another Bob Barr. What Senator Schumer still needs is a prominent conservative to be the co-sponsor.

Q: Earlier you mentioned genetic discrimination. What exactly is it, who will be affected, and what can be done about it?

LM: Advances in genetic science are both a potential blessing and a potential curse. Many horrible diseases are either caused by certain genetic mutations or far more likely to occur given certain genotypes. On the one hand, advances in genetic science may cure or eliminate some diseases, like breast cancer or Huntington's Disease or Alzheimer's, within our lifetime. On the other hand, advances in genetic knowledge can open the door to a new Dark Age of discrimination like we've never seen before. It's already quite possible for a woman who comes from a family with a history of breast cancer to undergo a genetic test to determine whether she has one of the two genetic mutations that increase the chance that she'll get breast cancer. There's nothing to stop an employer from conducting the same test. An employer who didn't want to pay the medical expenses, or increased insurance rates, due to female employees who get breast cancer, could avoid those expenses by requiring every female applicant to take a genetic test for the breast cancer genetic mutations and refusing to hire anyone who tests positive. That's not happening today, but only because the testing is not cost-justified yet. When employers do the math and consider how much they would have to spend to test every female applicant and how much they would save by screening out the women who are likely to get breast cancer some day, the costs are greater the benefits. But the cost of testing always drops like a stone over time. When the cost of breast cancer genetic testing gets down to five or ten dollars a test, it will be cost-justified to test women for the breast-cancer genes and to refuse to hire any woman who's got one of those genes. We may be rapidly approaching the day when people who carry the Huntington's gene or the Alzheimer's gene or a colon-cancer gene may never work in their lives because employers will conduct pre-employment genetic tests, will find out that these prospective employees are a likely economic liability, and just won't hire them.

Q: Does the American with Disabilities Act do anything to prevent this sort of discrimination?

LM: No. In order to be protected by the ADA you either have to be disabled or have to be perceived as disabled. Someone with breast cancer is disabled, but someone with a gene that predisposes her to breast cancer is not disabled at all. Someone with a genetic predisposition that hasn't yet manifested itself in any way is not disabled. Disability-rights advocates have tried to argue that a woman with one of the two breast-cancer genes is *perceived* as disabled by a prospective employer who won't hire her, but that's a questionable argument. Employers don't perceive people with genes that predispose them to future disease as any less *capable* than anyone else. They perceive them as being an economic liability. Being an economic liability is not the same as being disabled. Being perceived as an economic liability is not covered by the ADA. That's why we need new legislation to protect against that kind of discrimination. Existing law doesn't do the job.

Q: What has been NWI's involvement in promoting new legislation in that area?

LM: I have personally been involved in trying to fight genetic discrimination for 13 years now, and we have made a lot of progress. There are about 31 states now that have laws prohibiting genetic discrimination by employers. Some of those laws are more effective than others, but in many states you do have protection. Most of those laws are quite recent. The Institute had a great deal to do with helping those laws get enacted. We've written a model statute, which has been the basis of the majority of the new state laws. We've helped train more local advocates than I can count. We've written testimony for all sorts of people from the ACLU to unions on this point. We've testified ourselves several times. The Institute is acknowledged as a leading national expert in this area, and we've functioned as a resource to state advocates from coast to coast. We're also working on federal legislation, and we're getting relatively close. On May 21, the Senate Health, Education, Welfare and Pensions Committee *unanimously* passed the Snowe/Kennedy Bill, which would outlaw genetic discrimination by employers. Passage of genetic discrimination legislation is virtually assured in the Senate this year. The question is whether the House will do the right thing, which is really a question of whether the House leadership will do the right thing. A compromise was reached in the Senate, but the question is whether the House, with its stronger Republican majority, will endorse that compromise. So whether or not the legislation passes this year is essentially up to the House Majority Leader, Tom DeLay. If DeLay does the right thing, and he might because President Bush might urge him to, we'll get genetic discrimination legislation this year. If the President doesn't lean on DeLay hard enough, we're going to lose it all.

Q: So far we've discussed the NWI's work in relation to electronic monitoring and genetic testing. Both of these areas relate to privacy. Now I'd like to discuss a phenomenon that relates even more to employees' privacy and autonomy, that of employers trying to exert control over employees' behavior off the job. What are your thoughts on that?

LM: There are two forces that lead employers to try to regulate off-duty behavior. The bigger one is concern about medical costs. Smoking, drinking, scuba diving and riding motorcycles are dangerous. Employees who do these things generally have higher medical costs than those who don't. Employers who are trying to hold down medical costs frequently tell employees not to do things in their private lives that might increase the company's medical costs. The concern is understandable, but for employers to tell employees what they can or can't do on their own time is not a legitimate way of cutting costs. The concern is particularly acute because everything we do affects our health. What does the employee eat? Does he or she practice safe sex? Get a good night's sleep? If employers are allowed to control things we do in our private lives when they affect medical costs, then nothing in our private lives is safe any more. The other force that drives employers to attempt to control employees' off-duty behavior is moralistic meddling. The relationship between an employer and an employee is contractual: you do the job, they give you money. As long as you do your job, they should have no complaint, but employers frequently forget that. They think that because they've got the power of the paycheck, that they're entitled to use it any way they want to. We had one case where the employer just didn't believe in drinking alcohol, and our client was fired for going to a bar on Friday night with a couple of friends and having two beers. He wasn't an alcoholic, he wasn't arrested for drunk driving, there was never even a suggestion that he ever came to work under the influence of alcohol or drank during the workday. He had two beers on a Friday night and it cost him his job because his boss was a teetotaler. Sometimes it's sex. There are more cases than you might imagine of employers who are surfing the web and somehow stumble across one of their employees in the nude on the Internet. It doesn't affect the company. The employer is just personally offended because they're perhaps sexually conservative, and the next thing you know the employee's been fired. All too often employers forget that they don't have the right to regulate their employees' sex lives or politics. Just because they have the power to do it, they think they have the right to do it.

Q: How has NWI addressed this problem?

LM: The Institute has been instrumental in passing 29 state laws that restrict or eliminate an employer's ability to discriminate based on legal off-duty behavior. Some of those laws are quite comprehensive. In Colorado, for example, employers are prohibited from

discriminating against an employee based on *any* legal off-duty behavior whatsoever. As a result, Colorado was one of the early states to have a law against discrimination based on sexual orientation because practicing gay sex has been legal in Colorado for quite some time. Our Private Life Protection Act turned out to be, among other things, a law against discrimination in Colorado based on sexual orientation.

Q: It seems that NWI attempts to protect human rights in the workplace at all levels of government: the state, the national, and the international. What has been NWI's involvement in arenas other than state and national legislation?

LM: The Institute is opportunistic. We know the issues we care about, and we choose the strategy that works. In some case that means going to Congress. Sometimes it means going to state legislatures. In some cases, although not very often, it means going to court. We're not a law firm. We're not a lobbying firm. We're not wedded to any particular way of getting things done. We want to use whatever tool would be most effective to address the issue we're concerned about. There's an old saying that when the only tool you have is a hammer, everything looks like a nail. We try to avoid that trap. Our basic strategy is public education and legislation. People frequently think that the courts are the agents of progress and the friends of workers. Nothing could be farther from the truth. Courts are much better at applying statutory law than at creating new rights. But sometimes they create doctrines that undercut workers' rights. For example, the concept of striker replacement was made up out of thin air by the Supreme Court. It's not in the National Labor Relations Act. There's nothing in the NLRA that even suggests the concept of striker replacement. Employment at will was also made up by the courts out of nothing.

Q: Can you clarify what is meant by the phrase "employment at will"?

LM: It's the rule that, absent an express contractual agreement or one of the few public-policy exceptions, an employer has the right to fire an employee for any reason or for no reason at all. This doctrine is probably the worst evil of all. Terminating an employee for failing to perform is legitimate, but the idea that an employee may be terminated for no reason at all is an abomination. In America today, your boss could walk in and say, "You grew a beard over your vacation. I don't like beards. You're fired." And the employer would be within its rights. Your boss could walk in and say, "My wife burnt the toast this morning. You're fired." And you would have no legal rights. America is the only industrial democracy in the world that maintains this unfair and oppressive legal order. Employment at will is the "evil glue" that holds everything else together. If we didn't have the doctrine of employment at will, you'd have free speech in the workplace. If you made a political statement in the cafeteria that your boss didn't like and your boss tried to fire you, they wouldn't succeed, because they wouldn't have just cause to fire you. If we didn't have the doctrine of employment at will, you'd have greater electronic privacy, because you could use encryption in your personal e-mail and if your employer ordered you to remove the encryption, you could refuse without fear of being fired.

Q: How did the doctrine of employment at will come into existence, and can it be overturned?

LM: If you go back to the original cases where the courts created the doctrine of employment at will, they used Wood's Rule in support of the proposition that the law of America is employment at will. But every single case that Wood cites in support of his hornbook statement that employment at will is the law is incorrectly cited. Nevertheless, courts adopted this all across America. Courts are not necessarily the friends of workers. So the Institute deliberately adopted a strategy that did not center on litigation. Our job is to educate Americans about how few rights they have and about the abuses this leads to so that they will demand legal change. Once we've got the public sufficiently concerned about an issue that it gets on the legislative radar screen, then it's our job to act as consultants to legislators so that they draft the law correctly. That's our basic strategy and mode of operation. We don't focus on getting rid of employment at will because it's such a visionary goal we don't think we can do much about it today. But it's the ultimate long-term goal. Getting rid of employment at will is the Holy Grail for workplace human-rights lawyers.

Q: Is employment at will the standard in all 50 states?

LM: No. Montana no longer has employment at will. Montana adopted a very creative approach that deserves a lot more attention than it's getting. There are exception to employment at will in every jurisdiction that has it, but they're very narrow, and they're treated as torts. So what happens is that 99 out of 100 people who are fired unfairly get nothing, and the one who can find a crack in the wall of employment at will can get a million dollars, because it's treated as a tort with unlimited compensatory and punitive damages. Some people have suggested that a union model makes a great deal more sense. In a union, everyone has protection against unjust discharge. In a union, you can only be fired when your employer has a legitimate reason to fire you. But when you file a grievance with a union, you don't get unlimited compensatory and punitive damages, as you would in tort law. You get your job back

with the pay that you lost. There's a lot to be said for changing American discharge law from tort law to a union model. Everyone would be better off. Montana has adopted that approach.

Q: How aware are Americans generally, at least those who are neither in Montana nor in a union, about the weakness of the protection of their basic rights at work?

LM: Most Americans don't have a clue about how few rights they have at work. I've been doing this work for 14 years and I've gotten hundreds of phone calls from workers who have been shafted in the most unfair, arbitrary ways you can imagine, and when I tell them that I'm sorry but they have no legal remedy, they don't believe me. They're so convinced that their boss needs a legitimate reason to fire them that they don't believe us when we tell them that that isn't the case. American employment law is so bad that Americans can't really believe it's really the law.

Q: It sounds as if you're saying that the biggest weakness in the American legal system's protection of human rights in the workplace comes from the common law, the judge-made law. The statutes that exist are intended to provide some protection, but if not for them, there would really be no protection.

LM: That's right. There's virtually no common-law protection. Some of the scholarly literature talks about a balancing test between the privacy rights of employees and the needs of the employers, but it's meaningless because the actual outcome in the courts is that the employers almost always win. Rarely, if the employee has no reason whatsoever to conduct a highly intrusive procedure, the courts may prohibit it. But if the employer can articulate *any* reason at all, no matter how miniscule, the employer wins. For example, millions of Americans have their personal e-mails systematically monitored by their employers, but there has never been a case in America in which a court has found for an employee because of electronic monitoring by the employer. It has never happened. Not even once. The only case employees have ever won are cases involving hidden cameras in bathrooms and cases involving telephone monitoring. Even in the hidden camera cases the employees don't always win. If an employer puts a hidden camera in the women's bathroom because he's too cheap to subscribe to Playboy, the employees will win. If the employer puts a hidden camera in the bathroom because there's a rumor that employees have been smoking marijuana in the bathrooms, the employer may well win. That's how bad the state of workplace privacy is in America.

Q: What do you consider the biggest obstacles to remedying the situation? How do we fix the problem?

LM: There are two basic problems. One is that people know they're being treated unfairly at work, but don't think they can do anything about it. People think workplace abuse is like death and taxes: that you just can't do anything about them. Employers have had so much power for so long that people think that it's the order of the universe. And even if they do believe that things can be changed, there's the misconception, as I discussed earlier, that protecting workplace rights would hurt the market economy and our standard of living. The other major problem is the influence of money on politics. It's no secret that politics runs on money. Political campaigns cost millions of dollars, and politicians are dependent upon contributions from employers to get reelected.

Q: What about unions?

LM: Unions are absolutely crucial. Unions are the only powerful institution in America that cares about workers. The only things that really count on Capitol Hill are money and votes. Public-interest organizations like ours have virtually none of the former and not very many of the latter. The ACLU, for example, is one of the largest public-interest organizations in America. They have about 400,000 members. That's a lot of people, but in terms of influencing legislators, it's nothing. The only organizations that care about workers and have the money and the votes to have a real impact on Capitol Hill are the unions. Without them, we're in deep trouble. Not just on classic union issues like the right to organize. Other workplace rights issues are also hurt by the weakness of unions. The Communications Workers of America have been champions of employee privacy for as long as I can remember. If unions were stronger, we'd all be better off on all employment issues.

Q: You sound pessimistic about the current state of affairs.

LW: Not entirely. Making progress on workplace human rights issues in America is painfully slow and difficult, but we are moving forward. There's never been a repeal of a workers' rights law in this country. And we do pass new ones. In my lifetime, I've seen the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act passed. We've been involved in passing 31 state laws to prevent genetic discrimination. I've seen the enactment of 29 state laws to prevent employers

from discriminating based on off-duty conduct. The starting point for reforming American workplace law is abysmal, and progress is slow. But in the long run we're winning.

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