



WORKRIGHTS NEWS

NATIONAL WORKRIGHTS INSTITUTE



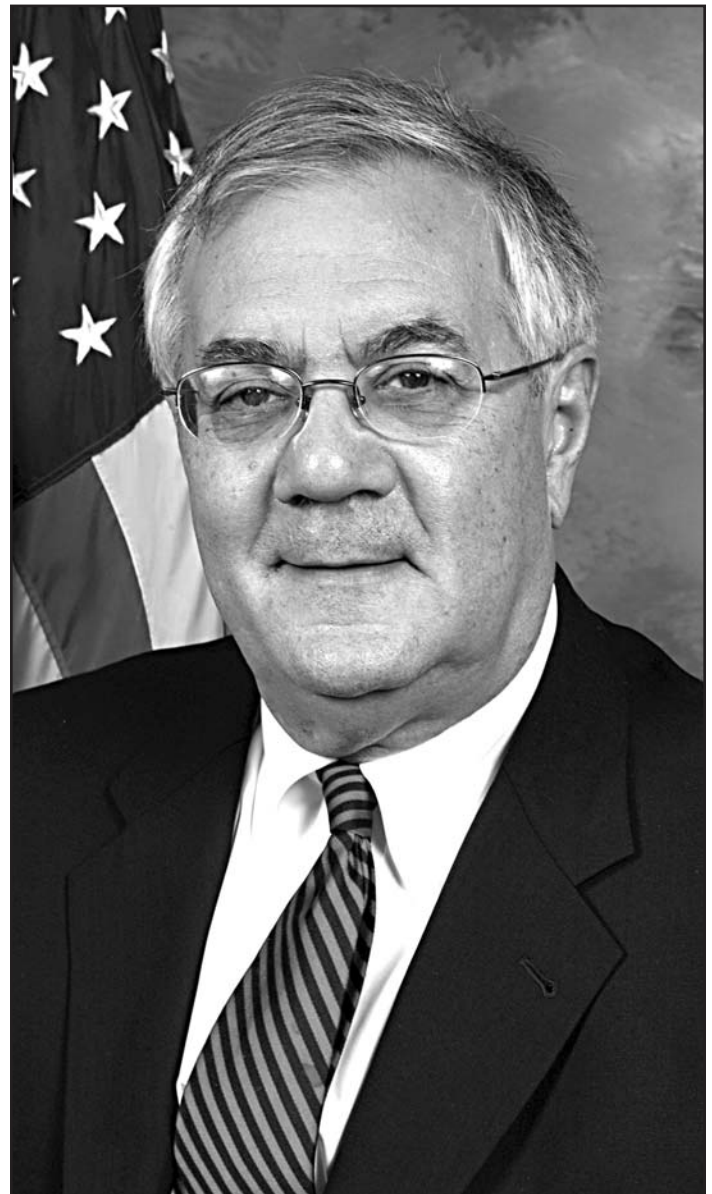
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National Workrights Institute Newsletter

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Congressman Barney Frank Speaks at NWI Event

On October 24, just prior to the 2006 mid-term elections, Congressman Barney Frank spoke to a full house at a National Workrights Institute sponsored event. He praised the Institute and its work and spoke optimistically about the road ahead for worker's rights. In particular he named Institute supported legislation that would prohibit genetic discrimination and mandatory arbitration of employment disputes as high priorities for the next session of Congress. He also laid out an ambitious plan to try to end the political stalemate between Republicans and Democrats on broad economic issues. "What I want to do is break that deadlock," Frank said. "A lot of policies that the business community wants us to adopt for growth are now blocked. On the other hand, the business community is successfully blocking the minimum wage increase and created a very anti-union attitude in the Congress." The Congressman proposed that if businesses support a minimum wage increase and provide protection for workers adversely affected by trade treaties, Democrats would be more willing to ease regulations and approve free-trade deals. In the current system, Congressman Frank noted, "you reach a point where you get more inequality than is healthy, and I believe we're at that point... What we want to do is to look at public policies that'll get some bigger share of the increased wealth into wages, and in return you'll see Democrats as internationalists. . . . I really urge the business community to join us." Congressman Frank also went through a point-by-point rebuttal of how workers fared under the Bush administration, arguing that only the wealthiest Americans have seen a significant income gain. The Congressman is now Chair of the 70-member Financial Services Committee which oversees everything from banking to housing to urban affairs, and we at the Institute are very excited to work with the Congressman to help implemented his vision in the new Congress.



NWI Issues Groundbreaking Study on Class Actions

Because of the high cost of litigation, the only way many legitimate employment cases can be brought is through class actions (in which many cases involving the same claim are combined into a single case).

Many employers now include clauses in their employment contracts in which employees waive the right to participate in a class action. Employees' attorneys are challenging such clauses on the grounds that they effectively deny employees access to justice, giving the employer a virtual blank check to break the law.

To succeed with these challenges, employees' attorneys need to prove that there are many legitimate claims that cannot be brought individually because of the cost. This is a difficult challenge.

The Institute has just completed a study that helps meet this challenge. We selected several well-known class actions in which the employer's wrongdoing was both obvious and widespread (such as a case involving Mitsubishi in which over 300 female employees were groped, forced to have sex with supervisors, and sexually harassed in other ways). We then analyzed court records to see how much money each plaintiff received when the case was resolved. Then we asked experienced employment attorneys to look at each case and estimate what the legal fees would have been for a single member of the class to proceed with an individual case.

Comparing these figures produced dramatic results. None of the more than 50,000 employees involved in the cases we studied could have brought their cases individually. For example, the women harassed at Mitsubishi received \$69,000 each. But it would have cost them at least \$160,000 in legal bills to bring the case. The results in the other class actions were even more dramatic.

Our study is a powerful tool against class action waivers. We are sharing it with plaintiffs' employment attorneys across the country, both directly and by the National Employment Lawyers Association posting it on their web site. We are also using it to educate the public about the importance of class actions by sending out a press release and posting it on our web site.

NWI ACTION ALERT:

Call the Capitol Switchboard and ask to be connected to your Senator or Congressman (202-224-3121) or <http://www.senate.gov> or <http://www.house.gov>

High hopes for Genetic Discrimination Act in the new Congress

The changes in Congressional leadership bring us closer to enacting the Genetic Information Nondiscrimination Act (GINA), a ten year effort on behalf of the National Workrights Institute to enact federal legislation prohibiting genetic discrimination in employment and health insurance. Such legislation would additionally put limitations on access to genetic information in the first place as well. The new leadership in both houses of Congress has put GINA at the top of their list of priorities. NWI legal director Jeremy Gruber and the Coalition for Genetic Fairness, a coalition founded and led by Jeremy Gruber will be meeting at the beginning of the session with sponsors from both parties to map out strategy for the coming months. GINA is expected to be introduced in both houses of Congress early into the session without any of the changes offered by the business community to water down its protection. A large press conference on Capitol Hill is planned with NWI staff participation. The Coalition is working hard to build support for GINA. NWI legal director Jeremy Gruber, after an intense two year effort, has been successful in getting the Leadership Conference on Civil Rights (The LCCR is a coalition of more than 180 national organizations representing the civil rights and labor communities) to put GINA at the top of their list of priorities for the new Congress and to get its individual members to openly and vocally support this important piece of legislation. We remain committed to getting this important legislation signed into law. We look forward to the 110th Congress bringing new opportunities!

TAKE ACTION

Tell Congress to pass the Genetic Information Nondiscrimination Act!

During the past several decades, our understanding of genetics has progressed considerably as procedures for identifying, analyzing and manipulating DNA have advanced. Among the many benefits of this growth in genetic technology are potential improvements in preventive health care, reproductive planning methods, and eventually therapies to cure illnesses with a specific genetic component. Unfortunately, one of the immediate consequences of recent progress in genetics has been a rise in discriminatory practices based on an individual's genetic information. Today, we have a historic opportunity to stamp out such discrimination. Genetic discrimination in employment is a very real problem. We've seen numerous

instances of adverse employment decisions made based on employees' genetic profile. Contact your member of Congress and tell them to support this important bill.

Massachusetts Privacy Initiative

Building on the Institute's success in Rhode Island enacting legislation prohibiting workplace video surveillance in private areas, NWI is now building a coalition to support similar legislation in the state of Massachusetts. All across the country, employers have installed cameras in areas that are completely indefensible. Many employers have installed hidden video cameras in locker rooms and bathrooms, sometimes inside the stalls. No one should be subjected to sexual voyeurism on the job. Institute staff are working hard to build a large coalition of organizations including the ACLU, the Communications Workers of America, SEIU and other unions and advocacy organizations. We have created materials and solidified legislative contacts to further this effort. We look forward to progress in the upcoming legislative session!

Louis Brandeis at 150: Democracy and Workers' Rights

By Jeremy Gruber

abbrev. version of article published for the Brandeis University Jubilee celebration and other publications

On this 150th anniversary of the birth of Louis Dembitz Brandeis, Americans have much for which to thank this giant of the 20th century. Perhaps no single issue, though, was more important to Brandeis than his enduring and forceful advocacy on behalf of the rights of working men and women.

By the time of the American Industrial Age, too many had forgotten the lessons of the American Revolution -- that political independence and democracy necessitated economic self-reliance. Brandeis recognized the need for economic independence in the larger context of a proper-functioning democracy and through that recognition grew the seeds of his then-radical economic philosophy. Brandeis wrote, "Industrial liberty must attend political liberty ... Some way must be worked out by which employer and employee, each recognizing the proper sphere of the other, will each be free to work for his own and for the common good, and that the powers of the individual employee must be developed to the utmost." He believed that a successful democracy necessitated not merely that workers be free from the arbitrary will of government, but that they be free from the high-handedness of

industry as well; that they have a significant degree of control over their economic and working lives and futures.

To this end Brandeis became a powerful advocate for trade unionism as a check on what he saw as the devastating exploitation of labor by business and its allies in government. Brandeis sought to overcome the adversarial relationship that had characterized labor-management relations up to that time, and ensure that both sides work together collaboratively with a mutual goal of achieving prosperity for all. "Don't assume," he warned "that the interests of employer and employee are necessarily hostile -- that what is good for one is necessarily bad for the other. The opposite is more apt to be the case." Brandeis helped Filene's department store draft a constitution for a co-operative association between the business and its employees that gave employees a voice in every aspect of the employment relationship. Similarly, he deftly resolved one of the most contentious strikes of the time -- the New York City garment workers in 1912.

Brandeis was no enemy of business. Quite the contrary, he believed that a balance of power was necessary to curb the "excesses" of an unrestricted capitalist system and create a fair yet competitive environment. He was also extremely wary of what he called the "Curse of Bigness," namely, the inefficiencies of the huge monopolies and their attendant financial and moral corruption that threatened not only his desired industrial democracy but small business and consumers as well. Brandeis believed America to be, "after all, not a country of dollars, but of ballots."

Brandeis devised the system of Savings Bank Life Insurance for industrial workers that exists to this day in Massachusetts and other states. He did similar work with pension systems. Brandeis became a forceful advocate for corrective social legislation. He fought for regularity of employment ("the guaranteed annual wage") and wage and hour legislation. In 1907, as an advocate in *Muller v. Oregon*, Brandeis persuaded a skeptical United States Supreme Court, by a 9-0 vote, to at least temporarily abandon its sacrosanct belief in the "liberty of contract" as applied to an individual's working conditions, and uphold the constitutionality of maximum-hour laws for women.

As an advisor to the Woodrow Wilson Administration (1913-1921), Brandeis helped craft the economic doctrine of President Wilson's New Freedom doctrine. Additionally, much of the New Deal legislation of President Franklin D. Roosevelt that would begin to regulate unchecked business power originated with Brandeis' ideas. His advocacy of government control of banking by the Federal Reserve Board prevailed over those favoring direct banker control, and his forceful advocacy aided passage of the Clayton Antitrust Act, and the creation of

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Louis Brandeis at 150: Democracy and Workers' Rights

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the Federal Trade Commission and the Securities and Exchange Commission.

In his initial years on the Supreme Court, Brandeis frequently dissented from anti-labor decisions such as those supporting injunctions against union activities and minimum wage legislation. Many of the powerful arguments that Brandeis expressed in his dissents served later as the basis for corrective legislation. Such were the Norris-La Guardia Act that restrained the issuance of injunctions against lawful strikes, and the National Labor Relations Act, which gave workers the right to organize, join unions, and bargain collectively. Brandeis' earlier dissents in cases overturning minimum wage legislation were later cited as the foundation for the Supreme Court decision to uphold such legislation in 1941.

Louis Brandeis' philosophy of industrial democracy and his advocacy on behalf of working men and women continue to remain highly relevant today. However, his emphasis on the necessity of achieving a balance between labor and capital is increasingly eroding. Wages and salaries currently account for

the lowest share of the gross domestic product (GDP) since the government began recording such data in 1947. Wages have stagnated, social benefits are being eliminated, and health care costs continue to rise for the average American worker. Corporate profits, by contrast, are at their highest share of GDP in more than 40 years and the income gap between executive compensation and average worker wages is at its highest rate ever. Traditional indicators of economic growth are failing to account for this disparity of economic experience.

Average workers do not have a voice regarding the changing economy or a claim to a fair share of its growth, and are at the same time faced with multiplying examples of corporate excess. They are victimized by a government that has repeatedly supported corporate priorities over worker interests, and actively worked to erode legal protections under the National Labor Relations Act and other socially beneficial laws. Thus, on this 150th anniversary of Louis Brandeis' birth we need to remember the many contributions he made to the rights of working men and women and hope that his vision of fairness and decency in the American workplace can be restored in the days and years ahead. And surely we must not forget his timeless words, "We can have a democratic society or we can have great concentrated wealth in the hands of a few. We cannot have both."