

DAVID E. FELLER MEMORIAL LABOR LAW LECTURE

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Enforcing Labor Laws: Wage Theft, the Myth of Neutrality, and Agency Transformation

Julie A. Su[†]

Thank you very much for having me here. I am really excited to finally come to Berkeley Law. One reason why I said no to David Rosenfeld in the past is that I realized early on as Labor Commissioner that I could easily spend all my time accepting invitations to speak about what I want to do, and not actually get any of it done. I did not want that to be my legacy. But I am glad to finally be here tonight. I came from Sacramento yesterday, and when I arrived I saw a poster at the BART station that said, “Minimum wage \$9.00 per hour,” and then, “Median CEO hourly wage \$5,048 per hour.” I took a picture of the poster and sent it to my daughters and said, “I love Berkeley.”

I want to start by saying something about David Feller. I never met him, but I do know and have learned a great deal from many of his students and disciples. What most impresses me about David Feller is the way he set

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[†] Julie A. Su is California’s current Labor Commissioner and a nationally recognized expert on workers’ rights and civil rights. Prior to her appointment as Labor Commissioner, she served as Litigation Director at the Asian Pacific American Legal Center (“APALC”), now named Asian Americans Advancing Justice. Commissioner Su is a graduate of Stanford University and Harvard Law School, and she began her career at APALC as a Skadden Fellow. In her seventeen years as a civil rights lawyer, Commissioner Su has brought numerous landmark lawsuits on behalf of low-wage workers in California. In the process, she has become a leader in a national and international movement of workers, activists, and good corporate citizens campaigning against sweatshop abuses throughout the world. This piece was prepared as an annual lecture in honor of David E. Feller and has been lightly edited for publication.

out to shape a body of law and was able to accomplish that goal, without a roadmap at that time and despite different setbacks. His lesson to all of us is that you can shape an entire body of law with the choices you make as a lawyer. Often in law school, at least in my education, it seemed that the law had evolved in a way that was inevitable, as if the laws that were passed and the cases we were taught were bound to come out that way. But as I have learned in my career, that is not at all true. As lawyers and as people in the legal system, we are constantly shaping, reshaping and making the law.

So tonight I want to talk a little about my journey doing that. It has required some faith and persistence, a great deal of patience, and finding good people to work with. Before I was appointed Labor Commissioner, I worked for seventeen years at a nonprofit civil rights organization in Southern California that is now called Asian Americans Advancing Justice. I went to law school because I had grown up translating for my parents, who were immigrants, and I learned early on that the law is a language and those who speak it get to decide who gets what in our society, who gets protected and who does not, who is defined in a way that is demeaning versus uplifting, and whose rights are respected and whose are not. I went to law school to become a translator in the language of the law for people who were disenfranchised, discriminated against, and exploited.

When I got to my first job at Asian Americans Advancing Justice, I represented a group of garment workers who were trafficked to the United States from Thailand and forced to work behind barbed wire and under armed guard in an apartment complex. In that case I realized that the law often does not just reflect our society's values, it also shapes those values. What the law is tells people what is right and good.

In this particular case,¹ the garment workers were undocumented because their traffickers lured them from their homes and brought them to this country using false passports. As soon as the workers escaped their imprisonment from the traffickers, they were thrown into federal immigration detention and were told they would be deported. The federal government's position was that this was the law and the government had the right to deport these workers. But as advocates, we argued that it did not matter if the law allowed their deportation; deporting them was just not the right thing to do and we were not going to let it happen. Ultimately we won that argument, and the workers were able to leave detention and stay in the country.²

The next task was to figure out how to address the wrongs these workers had experienced. The traffickers had imprisoned the workers for on

1. The case, *Bureerong v. Uvawas*, resulted in two published opinions: 922 F. Supp. 1450 (C.D. Cal. 1996) and 959 F. Supp. 1231 (C.D. Cal. 1997).

2. They were all designated material witnesses in the criminal case brought against their captors. *United States v. Manasurangkun*, No. CR 95-714(A) ABC (C.D. Cal. filed Nov. 9, 1995).

average two to three years. The workers were locked behind barbed wire and forced to sew garments for eighteen hours a day— until their fingers were raw and they could not see clearly anymore. And at the end of each day they dragged their tired bodies upstairs to sleep in this guarded apartment complex.

The sweatshop property owners responsible for the workers' mistreatment were taken to prison. However, the companies the workers were ultimately sewing for completely escaped responsibility. And so our challenge was to figure out how to hold those companies accountable, how to find a legal argument that the court would accept for why these companies were responsible. We ended up arguing that those companies were the joint employers of the workers, along with the sweatshop operators. It was the first federal lawsuit of its kind and we won back a significant amount of wages for the workers using that legal theory. But initially, the law on its face did not appear to hold the right parties accountable. We had to find a way to push the boundaries of the law to make that happen.

The garment-worker case was significant not only for its legal precedent and the wages recovered, but also because it demonstrated how getting workers engaged in a lawsuit really makes a difference. In that case we named all of the workers individually as plaintiffs. We did not bring a class action, and we did not rely on the government. Instead, we filed a lawsuit on behalf of 102 individual workers. That turned out to be a critical decision in terms of the outcome of the case. Through our effort of struggling and working together, and having the workers become decision-makers—about whether to agree to a settlement, whether to attend a court hearing or a mediation, or whether to picket a retail store—we ended up building a cohesive force. The workers were able to engage in the lawsuit and remain active in it for a four-year period. Their growing sense of their own power was exhilarating to witness. And without that cohesive force, we never would have achieved the same outcomes.

As for me, this case was defining, giving me a sense of the power that individuals working together have to actually change the law and to make the law so it embodies an inclusive vision of justice. This whole idea that the law is just, that it reflects what we as a society believe is right and wrong, brings me back to the billboard I saw when I arrived in Berkeley. The billboard forces us to consider what it says about us as a society that the disparity between a minimum wage worker making \$9.00 an hour and the average CEO making \$5,000 an hour is perfectly legal. What does that say about how much we value the contributions of low-wage workers, when what they earn working full-time, year-round in one year is the same as what that CEO can make in less than five hours? I pose this question because a lot of what has informed my work as a lawyer and advocate is

trying to figure out how to make existing legal protections meaningful and real, and how we can shape the law so that it actually reflects our vision of a more just society.

I was appointed four years ago by Governor Brown to serve as Labor Commissioner, and it was the first time I had ever worked inside government. Many people told me when I started that, because of the state of the economy, the budget problems in California, and the many problems that plagued the agency, modest aspirations were in order. I should not set my sights too high, they said, or raise expectations, or touch anything too controversial. But my career representing low-wage workers for nearly two decades taught me that working people deserve much more than modest aspirations.

One of the primary duties of the Labor Commissioner's Office is the adjudication of wage claims under California Labor Code 98(a), often called "Berman" wage claims.³ In my previous job, I represented workers in Berman wage claims, so I had seen both the power and the flaws of that system from the outside. And I had spent countless hours, along with other advocates, meeting with Labor Commissioners—my predecessors—and their deputies; we documented problems, made demands, and explained why language access was important, hostility towards undocumented workers unprofessional, and countless inexplicable delays unacceptable. We discussed how the culture of dividing workers, rather than realizing efficiencies and benefits by uniting them on their claims, was not what the government should be doing, and how inaccurate application of the law was embarrassing for the agency. I had done all of that work from the outside. Now, as Labor Commissioner, I had an extraordinary opportunity to be on the inside and figure out whether I could actually make those changes.

The name of my talk is "Wage Theft, The Myth of Neutrality, and Agency Transformation," so let me just talk for a moment about wage theft.⁴ Wage theft occurs any time a worker is paid less than she earned, and it takes many, many forms. For example, my office recently handled an investigation involving ten buffet restaurants where we found \$16 million had been stolen from over 600 workers.⁵ We found servers who were paid on average about \$1.15 per hour for seventy-two-hour workweeks.⁶ That is a clear example of wage theft. In another case, a San Diego restaurant hired

3. Cal. Lab. Code § 98(a) (West 2015); *see also Policies and Procedures for Wage Claim Processing*, CAL. DEP'T OF INDUS. RELATIONS (June 2012), <http://www.dir.ca.gov/dlse/policies.htm>.

4. In 2014, the California Labor Commissioner's Office launched a public awareness campaign about wage theft, which included the creation of a website to educate workers about wage theft and workplace rights: <http://www.wagetheftisacrime.com>.

5. *Labor Commissioner Cites Ten Northern California Buffet Restaurants \$16 Million for Wage Theft*, CAL. DEP'T OF INDUS. RELATIONS (Nov. 25, 2014), <http://www.dir.ca.gov/DIRNews/2014/2014-109.pdf>.

6. *Id.*

college students and told them they were not entitled to the minimum wage.⁷ When the workers finally realized that the company's claim did not seem right, they spoke up about it and were fired.

Wage theft also occurs with “off the clock work,” where a worker comes in at 7:00 a.m. but does not clock in until 8:00 a.m., or where a worker clocks out at 5:00 p.m. but keeps on working until 6:00 p.m. or 7:00 p.m., for example. We see this often in retail stores, where workers have to come in early and get the store ready—put up the signs, fold clothes—but they are not actually on the clock until a customer comes in the door. My office also recently had a case involving residential care homes, where we assessed over \$3 million in stolen wages because workers were told they had to come in the night before their shift began.⁸ The workers were told they could just sleep on a sofa bed in the garage.⁹ However, if a patient needed them, the workers had to get up and work, even though they were still not actually on the clock until the next morning.¹⁰ We had another case involving a warehouse that employed over 300 workers but only provided three timecard machines.¹¹ As a result, the workers had to line up and cut their breaks short just to clock in.¹² The workers had to come back early from a thirty-minute lunch break so they could clock in on time to get back to work.¹³

In addition to off-the-clock time worked, there are also off-the-clock *workers*, which are employees who do not show up anywhere on the payroll even though they actually do the work. We see janitorial cases where employers hire a husband and wife to work together, but only one is on the payroll and only one of them gets paid. The company tells the workers to share. That is wage theft.

Wage theft also occurs when workers are given their paycheck and told to pay a portion of it back or when workers are paid with a check and then told they are required to pay their employer to cash the check.

Piece-rate payment systems are another common way that wage theft occurs. Piece rate is when you pay by production levels. Workers routinely

7. *California Labor Commissioner Investigation Leads to Criminal Indictment of Restaurant Owners for Wage Theft*, CAL. DEP'T OF INDUS. RELATIONS (Apr. 9, 2013), <https://www.dir.ca.gov/DIRNews/2013/IR2013-19.pdf>.

8. *Labor Commissioner Cites Four Bay Area Assisted Living Providers More Than \$3 Million for Labor Violations*, CAL. DEP'T OF INDUS. RELATIONS (Oct. 30, 2014), <https://www.dir.ca.gov/DIRNews/2014/2014-101.pdf>.

9. *Id.*

10. *See id.*

11. *Labor Commissioner Cites Southern California Warehouse over \$1 Million for Wage Theft*, CAL. DEP'T OF INDUS. RELATIONS (Jan. 28, 2013), <https://www.dir.ca.gov/DIRNews/2013/IR2013-05.html>.

12. *See id.*

13. *See id.*

do not realize that even if they are paid by piece rate they still have to be guaranteed at least the minimum wage. Piece rate is often a way that workers are taught to blame themselves for not making enough money.

These are all cases that we have seen in the four years since I have been in office as Labor Commissioner. For many years, the Labor Commissioner's Office did not prioritize wage investigations. Workers' compensation or employer registration cases are easier paper violations. Under Governor Brown's administration, we set out to devote the resources to uncovering wage theft cases because getting wages back in workers' pockets should be our most important mission, even though citations for other violations are often easier to find.

Wage theft has tremendous costs not only in terms of individual workers' incomes, but also for their families and entire communities. Often we see workers who are working two or three jobs because their one job does not pay enough to get by. However, when I first began to talk about wage theft as Labor Commissioner, some said, "What is that? Where do you see that?" There was a lack of understanding about wage theft and its prevalence.

Moreover, some people said that we should not use the term "wage theft." It is too aggressive, they said, or too hostile. And some people said maybe the term is appropriate for an advocate, but not really appropriate for the California Labor Commissioner to use.¹⁴

This brings me to my second point, which is the Myth of Neutrality. What struck me the most when I started this job is how problematic and deeply rooted this idea of government neutrality actually is. The idea is premised on two flawed ways of thinking. One is that the status quo is neutral in some way, that the way things are occurring has a neutrality to it that should not be disrupted. This way of thinking holds that when we do anything to change the status quo, somehow we have displayed a lack of neutrality that is unseemly for a government agency. This plays out in really troublesome ways inside government agencies. Workers filing claims is considered disruptive. Our entering workplaces to conduct investigations is disruptive. So we should control how many claims are filed and limit the depth of our investigations. But in underground-economy industries where wage theft and worker exploitation are the norm, the status quo is not neutral. Our job should be to disrupt the dynamic where workers feel they have to go to work each day and put up with not being paid what they have earned and not being treated the way a human being should be treated.

14. Instead of using the term "wage theft," the U.S. Department of Labor often uses terms such as "owed wages" or "unpaid wages" to describe the problem of employees not being paid for their work. See, e.g., *Workers Owed Wage (WOW) System*, WAGE & HOUR DIV., U.S. DEP'T OF LABOR, <http://www.dol.gov/whd/wow/WOW-flyer.pdf> (last visited Sept. 24, 2015).

The second premise of government neutrality is the assumption that government is not supposed to take sides. But we are an enforcement agency and are on the side of the law. As Labor Commissioner, I have said repeatedly that we are not a neutral agency. We must be impartial in our adjudication and unbiased in our investigations but we are not neutral about what fundamental protections must exist in the workplace. We are on the side of the law. What does this mean? It means we are on the side of employers who play by the rules; we are on the side of employees whose rights have been violated. We need to always act fairly, but if you break the law, you are going to view our enforcement as biased. Many employers who are caught engaging in unlawful practices are quick to charge us as acting unfairly—they are going to say that we are not on their side. But we are not supposed to be.

To give an example of this, I want to talk about some cases that were filed with my office involving port truck drivers. Truck drivers working out of the Port of Long Beach have filed over 520 Berman wage claims with my office.¹⁵ These drivers work long days taking cargo from the Port to warehouses, from warehouses to stores, and back again. They often work seventy-hour weeks. And they are told that they are independent contractors, which means they are forced to pay all of their own business expenses. The drivers pay for gas, truck maintenance, and for their own insurance.

The drivers have filed Labor Code section 2802 claims for reimbursement of the business expenses they have paid.¹⁶ The companies argue that the drivers are independent contractors and therefore are responsible for their own business expenses. We have adjudicated several dozen of these cases now, and we have consistently found misclassification. We evaluate each claim on a case-by-case basis, conducting an individualized, fact-based analysis of each case applying the California *Borello* factors¹⁷ to assess whether someone is an employee or an independent contractor.

The response from the trucking industry has been a full attack on not just the individual case results but on our very authority to adjudicate these

15. By November 2015, the total number of wage claims filed by port truck drivers rose to over 720.

16. California law requires employers to compensate employees for all “necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Cal. Labor Code § 2802(a) (West 2015). The port drivers were not compensated for business expenses because the trucking companies claimed the drivers were independent contractors, who are not covered by section 2802.

17. To determine whether a worker is an employee or independent contractor, California courts apply a multi-factor test drawn from *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989). The most significant of the “*Borello* factors” is whether the person to whom service is rendered controls, or has the right to control, the worker both as to the work done and the manner and means in which it is performed. *Id.* at 350.

claims at all. We have been sued in state and federal court challenging our jurisdiction. We have been pushed politically to foreclose access to these drivers and been told that our decision to accept these claims runs contrary to prior administrations' policies. One argument goes: misclassification is too complicated for the Labor Commissioner's administrative process, and such cases should be pushed to the courts. The basis for all of these arguments—sometimes explicit and sometimes implicit—is that accepting these cases evinces bias and deciding these cases routinely in favor of drivers confirms that bias. These companies argue that we are not being fair because if we were fair, more (about half, one suggestion goes) of these claims would come out in favor of the companies. This mentality is part of the problem. Government neutrality is routinely equated with fairness. But in fact, they are not the same thing. We must aspire to be fair in all of our work, but we are not neutral about the outcome of cases. We seek to fulfill our mandate to enforce the law. In industries where there are systemic and rampant violations, the fair outcome may very well be decisions that all go one way in favor of workers whose rights are violated, because this is what the law demands.

In these kinds of misclassification cases, many companies also argue that the claims should be in arbitration, rather than in the Berman wage-claim process before the Labor Commissioner. This is because there is an arbitration clause in many of the independent contractor agreements the drivers have signed. (And remember, the existence of a contract agreement is not itself the primary or determinative factor in deciding whether someone is actually an employee; there are multiple factors the courts will look at, including right to exercise control by the putative employer.¹⁸) The trucking companies have therefore argued that these cases should be in arbitration and not adjudicated by the Labor Commissioner's Office.

In 2011, the California Supreme Court held in *Sonic-Calabasas A, Inc. v. Moreno* (*Sonic I*)¹⁹ that an arbitration clause that categorically denies workers the right to go through the Berman process is illegal and cannot be enforced. However, in 2013, on remand from the U.S. Supreme Court, the California Supreme Court in *Sonic II*²⁰ revised its position to hold that such an arbitration clause is not categorically illegal unless the arbitration clause itself is unconscionable. When that decision came down, some breathed a sigh of relief. This meant, they thought, that we did not have to take all these cases. Well, instead we set out to apply *Sonic II* and to prove in the right situations that some of these arbitration clauses were actually blatantly unconscionable, procedurally and substantively. Our record has been mixed

18. See *id.* at 351.

19. 51 Cal. 4th 659, 682-84 (2011), *cert. granted, judgment vacated*, 132 S. Ct. 496 (2011).

20. *Sonic-Calabasas A, Inc. v. Moreno*, 57 Cal. 4th 1109, 1146 (2013).

in different industries, but in the port trucking industry we have consistently won cases arguing that the arbitration clauses should not be applied.

I talk about these cases because they show how the Berman process, although a forum for individual cases, can have much broader impact, and also how the choices that are made by the Labor Commissioner's Office make a really big difference. When we are told that prior administrations would never have taken these cases, I think we should be proud of that. Rather than running away from the difficult or complex cases, we should be doing that much more to get them right. The decisions we make as the Labor Commissioner's Office have an impact, everything from whether we choose to apply *Sonic II* and fight arbitration clauses or take a resource-saving option and let the cases go, to whether we accept jurisdiction over these cases at all and give drivers their day in a Berman hearing or keep them out. In government, the impact of decisions made about who gets access and where to prioritize limited resources is far from neutral.

This brings me to the third part of my talk, which is Agency Transformation. What we accomplished by hearing the port truck drivers' cases and many others involving garment workers and carwashers, farmworkers, restaurant, residential care, and hotel workers, and so many more, reflects what I hope will be a revitalization of our commitment to truly being an effective law enforcement agency. To that end, one of the major things we have done at the agency is revamp the way we do our investigations. My office has the statutory right to enter any workplace and conduct an investigation.²¹ That is incredibly powerful. We can walk into any workplace and say, "We're here to investigate you," and employers and employees are supposed to cooperate and comply.

However, from both my career before becoming Labor Commissioner and from my observations while out in the field with my deputies when I first started, I knew that it is not enough to have access to the workplace. Just because you are allowed to talk to workers does not mean that they want to talk to you. Effective investigations should involve far more than just on-site inspections. Now we do off-site interviews with workers, in advance of our inspection whenever possible, relying heavily on community partners to make that happen.

We also do surveillance before inspections, and it tells us so many things. It was not done before, but now we do surveillance so we can find out what time the business opens, what time it closes, how many workers come in and out, who the supervisors are, where the different exits are, and so forth. We do all this surveillance so that when we actually conduct an inspection we can be much more effective and be armed with more information than if we just walked in cold, without adequate preparation.

21. Cal. Labor Code § 1174(b) (West 2015).

These strategies have helped us uncover and cite for far more stolen wages than at any other time in the history of the Labor Commissioner's Office. In 2014, the amount of wages that we found owed to California workers was seven times the amount that was found in 2010, the year before Governor Brown was elected.

In the past, investigations and inspections were conducted and no wage violations found, but we know why that was the case. On-site interviews with workers who are being watched by their employer are not going to tell you exactly what goes on in that workplace. The perversity of the old approach was that workers would later come forward and say, "I could not tell you then what was going on, but I want to tell you now." The Labor Commissioner's Office, however, would tell those workers they were no longer credible, so now they could not build a case. But the investigation created that problem in the first place. The odd thing about the way it was done before was that if you did X number of inspections and never found any wage violations, that result was used to support the idea that we were doing pretty well in California, and that there was no real problem of wage theft. But now we have started to turn the massive tide on recognizing wage theft problems. We are finally uncovering them, attacking them, and getting those workers their wages back.

Another major issue related to our field enforcement investigations is the need for better technology inside the office. When I first started and spent time taking a really hard look at every single process, every single manual, every form, and everything else we were using, I realized that most of it needed a dramatic overhaul. And so we set out to rewrite everything, including our citations, which were incredibly cumbersome. The citation forms were outdated and did not reflect a whole bunch of laws that had been passed and the resulting violations that could be cited. We rewrote the citation form to make it easier to use and reflective of the full panoply of laws on the books.

Even with the updated citations, however, deputies had to write each section by hand when they went out and conducted investigations. It was very, very tedious. For many deputies it became a morale issue that we were asking them to take on more work without the tools to do it efficiently. Starting this year, my field deputies are going to be equipped with computer tablets in the field. Now deputies will have an electronic version of the citation showing the Labor Code sections, and they just have to click boxes to indicate which violations they are citing. That information will go directly into our database, saving the deputies the hassle of the old way, which involved writing each section by hand, coming back to the office and entering it in a database, and then taking the same information and manually entering it into an Excel document. It was crazy. Now we are changing all of that so our office can be much more efficient and accurate in

what we do. I call that whole process our “dream database” because when I first said I wanted to create a holistic and integrated database so information was accurate and shared across the Division, people said, “Oh, that’s a pipe dream.”

Now, I want to return for a minute to talking about the importance of community partners. Another part of the mythology of government neutrality is the idea that the Labor Commissioner’s Office should not work with community-based organizations, unions, or other groups on the outside, because somehow that is evidence of bias. I respond by analogizing community partnerships to a model which is already well-accepted in law enforcement: community policing. Cops work with community groups on the ground all the time because those groups know the communities and have their trust. That kind of partnership is what we are doing much more of. That is how we get the off-site worker interviews. That is how we learn where the violations are taking place, so we are not doing randomized sweeps.

When I first started as Labor Commissioner, I asked my deputies how we find targets, and they said, “We open the Yellow Pages.” Another common way was to just do an internet search for “car wash.” That is the least strategic and efficient way to find labor law violations in California. Instead, one of the best ways we have established for finding violations is to work with community-based organizations who already have the trust of workers, speak the language of workers, understand how violations occur and are often masked, and are willing to collaborate with us by giving us leads and helping to bridge the trust gap between workers and law enforcement. As a result of these partnerships, we have been able to find violations in warehouses in the Inland Empire,²² on construction sites in Eureka and on farms in Salinas, and we have been able to enforce in the janitorial industry across the State.²³

The janitorial industry is especially challenging because most of that work takes place outside of regular business hours, in the middle of the night, and often in small teams. When I first said we should address wage theft in the janitorial industry many deputies said, “We were told not to do that because it’s way too hard.” We should be running towards the hard problems, not away from them, because in those circumstances the workers are even more vulnerable. Because of our partnerships with groups that

22. *Labor Commissioner Cites Southern California Warehouse over \$1 Million for Wage Theft*, *supra* note 11.

23. *California Labor Commissioner Cites Two Janitorial Companies More Than \$1.5 Million for Multiple Wage Theft Violations*, CAL. DEP’T OF INDUS. RELATIONS (May 8, 2014), <https://www.dir.ca.gov/DIRNews/2014/2014-42.pdf>.

work with janitors, we have been able to find violations and get wages back to janitorial workers, even though it is a difficult industry to enforce in.²⁴

We have also aligned and spent a lot of time working with employer organizations. We tell employers that they can be our partners too. They know who the unfair competitors are because they are the ones winning bids by underbidding every contract, making it impossible for those who play by the rules to get a fair shot. Employers, however, are much more reluctant to speak out about what they know. They do not want to be seen as snitches. Perhaps, at times, they are nervous about shining any light on violations, in case they become the target or their industry is viewed in a bad light. But just as we have found a way to be more effective at combating wage theft than ever through partnerships with our worker-advocate friends, we continue to try to build trusted avenues of communication and collaboration with our employer-advocate friends, to help us identify the worst offenders and the most strategic targets to change industry practices and to incentivize good behavior.

In the janitorial and other industries we are also now doing more off-hour inspections. We arrive at warehouses at 6:00 a.m. and nightclubs after 6:00 p.m. One janitorial company told us they did not have any work in California, so we did our surveillance, worked with our community partners, and conducted an inspection at midnight to find that they were cleaning restaurants in San Diego. In all, we have made many changes to our investigation process that have allowed us to be much more effective. And that is just on our field enforcement side.

On the Berman hearing side, we have made important changes too. I am very happy that we have so many students in this room who are actually working right now with clinics that we set up in our offices where law students come in and help claimants to complete their wage claim forms and understand the process better.²⁵ We have students who are helping in San Francisco and Oakland and we have expanded that model to other offices as well. I also created a video about the wage claim process. When I first started my job as Labor Commissioner, I went to several of my offices and sat in the waiting room to see what that experience was like. It gave me many ideas for what we could do better. We are still working to create a more supportive and welcoming environment, but I realized there is a captive audience there that could be educated about what to expect in the process and what they could do to prepare, so we created a video explaining

24. One of the most valued partners in our work is the Maintenance Cooperation Trust Fund, headed by Lilia Garcia-Brower, who has pioneered effective community-government partnerships from her position for over a decade.

25. The Wage Claim Clinics were established in partnership with the Legal Aid Society–Employment Law Center. See *Wage Claim Clinic Launched in Oakland and San Francisco*, LEGAL AID SOCIETY–EMPLOYMENT LAW CENTER (Jan. 10, 2014), <https://las-elc.org/news/wage-claim-clinic-launched-in-oakland-and-san-francisco>.

that and it is shown in our waiting rooms now.²⁶ We are working with Consulate offices to show it in their offices as well.

When I used to represent workers, I observed that even when I brought in a group of workers, the Labor Commissioner's Office would completely separate all the workers and individually assess each worker's claims. Over the last four years, we have been thinking about how to tap into the potential of workers who are willing to work together. In these cases where workers already came forward in a display of collective action, we have done more group interviews of workers, and we have made it a point to combine the Berman hearings of multiple workers against a single employer. This is good not only for the workers, but for the employers also, since it saves them time and avoids duplicative testimony. It is more efficient for the office too, so many of these changes are actually a win-win for everybody. We also require now that all the deputies, in the very first meeting with the employer and employee, make clear that immigration status is totally irrelevant to the process, that any comment about it will not be tolerated in our offices, and that any retaliation for it is going to be referred immediately to our retaliation unit.

The last agency transformation initiative I want to discuss is our formation of a Criminal Investigation Unit.²⁷ The unit is made up of sworn peace officers who are basically cops. When we first implemented the unit, newspaper headlines warned of armed Labor Commissioner deputies coming to get employers in California and arrest them for crimes. And, well, we are! If you are stealing wages from your workers, that is a crime. We have filed over a dozen felony wage-theft cases with district attorneys across the state and we have had employers arrested and thrown in jail for the wage theft they committed.

Sometimes when we file felony wage-theft cases, DAs respond that they do not think they should be handling those cases when they have other really big important cases involving "real" crime, such as robberies, rape, and domestic violence. My response is that wage theft *is* like robbery because someone has stolen something from workers by force or fear. Part of this vision is that eventually we will live in a California in which workers who are exploited can choose whether they want to file a claim with the Labor Commissioner or walk into any police department and say, "My employer just stole my wages and I want to file a police report." I think that would start to change the way we look at the value of working people and the importance of paying them wages, and recognize the impact of wage theft on the safety and security of our communities.

26. See *How to File a Wage Claim*, CAL. DEP'T OF INDUS. RELATIONS, <http://www.dir.ca.gov/dlse/howtofilewageclaim.htm> (last visited Sept. 24, 2015).

27. *California Labor Commissioner Launches Criminal Investigation*, CAL. DEP'T OF INDUS. RELATIONS (Feb. 27, 2012), <https://www.dir.ca.gov/DIRNews/2012/IR2012-09.html>.

I will close with two messages. One is to address the question often posed about what is ahead for the next four years with the Labor Commissioner's Office. For me, the question is what else do we want from the agency? What do we want a true, twenty-first century, effective labor law enforcement agency in the eighth- or ninth-largest economy in the world to look like? What do we want it to do? I think part of the answer is in continuing to make these policy and process changes I have discussed and ensuring that they outlast this administration. And part of it is looking at what kind of legislative change is needed to strengthen the Labor Commissioner's Office to give it all the tools that are needed. What kind of resources and what kind of laws would allow the Labor Commissioner's Office to not just address wage theft after it occurs but help prevent it in the first place? Part of the answer is to invest internally in leadership and employee development that will change the culture of the agency. But part of the answer is also to instill a sense of our mission at all levels of the Division, to go from seeing our primary role as processing cases and issuing citations to recognizing that what we do, when we do it well, is to fight against poverty and fight for economic justice.

The last thing I want to say, especially given all the law students in the room, is something that I wish I had known when I was in law school because I could have spent a lot less time second-guessing myself and having a lot of angst about why I chose this particular path. And that is the point I started with: it is very important to remember that the law is not inevitable. The doctrines, the cases, and the laws that were passed were not just meant to be. They are the results of hundreds of thousands of decisions made by individuals, mostly lawyers but not just lawyers. The decisions are made in the legislature; they are made in courtrooms; they are made by advocates in the decisions about who to represent and what claims to pursue, and by organizers about how to exercise their power and the power of the people. They are made by all of us about which laws we want to enforce and whose issues are worthy of our attention.

The law is made in what kind of cases we want to bring, how far we want to push the boundaries of the law, where we want to devote our resources, and where we want to devote our time. The law—and I certainly felt this in law school—has been intransigent and difficult, and it can seem like a machine that is so hard to change. But the law has also been at its best a place where people, against great odds, have changed our society for the better. And, because the law often tells us what is right, all of you are, and can continue to be, part of this process that is creating a society that feels more right to us. I look forward to welcoming you all to that struggle. Thank you.