THE FARM WORKER—THE BEGINNING OF A NEW AWARENESS

CARLOS YNOSTRONZA

> It is, in many respects, a melodramatic history, a story of theft, fraud, violence and exploitation. It completely belies the sense of peace and lassitude that seems to hover over rural California. It is a story of nearly seventy years' exploitation of minority racial and other groups by a powerful clique of land owners whose power is based upon an anachronistic system of landownership dating from the creation, during Spanish rule, of feudalistic patterns of ownership and control. The most remarkable single circumstance pertaining to the entire record is the unbroken continuity of control. The exploitation of farm labor in California, which is one of the ugliest chapters in the history of American industry, is as old as the system of landownership of which it is a part. Time has merely tightened the system of ownership and control and furthered the degradation of farm labor.[1]

These are introductory words of Carey McWilliams' classic of three decades ago in which he capsulizes the saga of migratory farm labor in California. Although many years have passed since these words were written, and times have changed, the description is poignantly contemporary. It is doubtful whether a more helpful social and historical account has been written to date.

The purpose of this article is to explore some of the social realities surrounding the rural labor scene and to indicate some of the ways in which legal approaches have been employed in an attempt to bring about needed changes. Naturally, this approach acknowledges that there are some areas in which extra-judicial approaches have been more successful, suggesting that the courts are not the exclusive forum through which progress for the farm worker can be made.

1. Peculiarity Of The Farm Workers' Plight

In order to understand the current problems which farm workers face today, a general overview is desirable. The reader has already been referred to what may be considered the classic account of the migratory

1. C. MCWILLIAMS, FACTORIES IN THE FIELD 7 (1939).

farm worker,[2] which he may supplement with other more recent works which deal wih the subject, some of which are cited herein. Even a general study will show that the situation of the present-day farm worker in the United States cannot be characterized in any simplistic way. That situation involves a complex combination of historical, economic sociological, and other factors which must be understood if any analysis of the farm worker's situation is to be fruitful.

While the farm workers' situation is in many respects unique, there are, of course, a number of differences among farm workers themselves which should not be overlooked. Such differences may be attributable to geographic location, ethnic background, occupational skill, any other differences which make it necessary to qualify and generalizations which might be made of the farm worker group as a class. However, bearing these differences in mind, it is also valuable to evaluate the plight of farm workers generally by understanding the many common denominators which make the farm workers' case singularly unique.

Perhaps the most obvious characteristic is that of the several hundred thousand farm workers in this country, the vast majority are untrained to do any other work which requires greater skill than that of a farm worker. Few farm workers, in contrast to farmers, receive any formal training which they can apply to their work. Whatever expertise is acquired by a farm worker has usually been acquired through on-the-job experience, using the field as a classroom to pass on the practical experience of preceding generations. To add to this lack of formal occupational training, most farm workers have little or no formal training of any kind. It is therefore clear to perceive why the farm worker is in actuality locked into his occupation, with practically no hope of ever moving to a different occupation.

Another important denominator lies in the stark fact that minority groups constitute a very high percentage of all California farm workers. Thus while California's Anglo-American population is approximately 78.8%,[3] only 12% of the California farm worker population is Anglo-American.[4] While Mexican-Americans constitute only 11.1% of California's population,[5] Mexican-Americans compose a

2. *Id.*, *see generally*.

3. Financial and Population Research Section, California State Department of Finance, Provisional Estimates of The Racial and Ethnic Composition of California, (1966-1967).

4. California State Department of Public Health, The California Farm Workers Health Services Annual Report (1968).

5. California State Department of Finance, *supra* note 3.

disproportionately high 67% of the California farm worker force.[6] The rest of the California population, 10.1%, is composed of other racial and ethnic groups[7] which constitute the remaining 21% of the California farm worker force.[8] Thus, about one-tenth of the general population (i.e. Mexican-Americans) constitutes about two-thirds of California's farm worker population, a fact which means that cultural and language considerations cannot be overlooked.

Another element which distinguishes the farm workers' occupational plight is the seasonal nature of farm work which has resulted in a migratory labor force. Different crops ripen at different times of the year, and the harvest season in the South begins earlier in the year than the harvest season in the North. Historically, the cycle of migration has tended to follow the crops, beginning in the southernmost parts of the Southwest northward into the agricultural fields of the northwestern states. Although the migration of farm workers has diminished somewhat with the settlement of the West, today many thousands of families still follow the crops as their ancestors have done for generations, knowing no other way of life. The implications of this huge annual migration of workers, often with their families, are apparent. Perhaps the hardest-hit are the children of these families who, through no choice of their own, are deprived of their right to a decent and continuous education and who are thereby largely deprived of any opportunity to break away from the cycle of migration. The family as a whole suffers its toll, too, in terms of economic instability, lack of roots, and understandable frustration with a pattern of life which seems inescapable and unnecessarily cruel. With the advent of public assistance programs in the depression period, the hope of economic stability, at minimum, caused some families to settle down in one location in an effort to retrieve the other marks of stability which had been lost generations ago. Public assistance, however, has proved to be no panacea, and farm worker migration is as much a reality today as it was prior to the 1930's.

Farm workers historically have been an unorganized occupational group, and it is not unfair to say that this is still true, although we can see today the hopeful beginnings of some organizational effort.[9] This

6. California State Department of Public Health, *supra* note 4.

7. California State Department of Finance, *supra* note 3.

8. California State Department of Public Health, *supra* note 4.

9. For a graphic account of the 1965 grape strike in Delano, California led by Caesar Chavez and the Agricultural Workers Organizing Committee. *See generally* E. NELSON, HUELGA (1966).

state of affairs is particularly significant because, in contrast to other major American occupational groups, farm workers are specifically excluded from coverage under the Federal National Labor Relations Act of the 1930's. Thus they are denied the right to elect union representatives who will be recognized by law as their agents to bargain collectively with employers. Although the last decade has seen mounting activity in the field of farm worker organization, such organization is limited in effectiveness until appropriate legislation is enacted which will compel employers of farm workers to sit at the negotiating table with elected employee representatives.

Yet another factor which distinguishes farm workers as an occupational group from other groups is the large-scale presence of a foreign labor supply with which they must compete for jobs. In response to the labor shortage created by the requirements of World War II, the governments of Mexico and the United States entered into a series of agreements whereby *braceros*, Mexican nationals, were imported lawfully into the United States for the express purpose of saving the crops which farmers felt would otherwise be lost. The *bracero* program was a well organized government contracting system which farmers succeeded in having enacted into law in 1951 in the form of Public Law 78,[10] well after any wartime relationizations could be justified. Thus in the 10 years between 1950 and 1960 more than 3,300,000 *braceros* were employed in the agriculture economies principally of Texas, California, New Mexico, Arizona, and Arkansas.[11] In 1967 the Department of Labor, in settlement of a case filed in behalf of domestic farm workers,[12] agreed to hold public hearings before certifying the importation of foreign labor. As a result, no certifications were issued for 1968 and no *braceros* were admitted in that year.[13] However, while the legal importation of foreign labor has been drastically curtailed, hundreds of thousands of illegal aliens still compete annually with domestic farm workers. Thus what was until recently accomplished legally under the *bracero* program is now accomplished extra-legally, thus conveniently circumventing the now restrictive certification procedures required by the Labor Department.

The plight of the farm worker in the United States is not an ordinary one, nor is it a sweet one. We have seen how the farm worker is faced

10. Act of July 12, 1951, ch. 223, 65 Stat. 119.

11. E. GALARZA, MERCHANTS OF LABOR 15 (1964).

12. Alaniz v. Wirtz, No. 47807 (N.D. Cal., filed Sept. 8, 1967).

13. Greene, *Immigration Law and Rural Poverty—The Problems of the Illegal Entrant*, 1969 DUKE L.J. 475, 478 1969.

with a combination of stumbling blocks, not the least of which are the practical and legal difficulties of effective organization. For decades the farm worker has been a silent part of "the other America," aptly described by Michael Harrington in his work by the same name.[14] The plight of the farm woker has finally become an important national concern, due to the increased self-awareness and self-actualization among farm workers themselves. The extent to which that concern can be attributed to judicial reform is the principle subject of this article.

2. The War on Poverty Becomes Fashionable: OEO Enters The Scene

Until recent years, poverty in the United States was not a popular subject for national consumption in the mass media. The premium had been on portraying the United States as "the affluent society," "the land of opportunity," and "the most advanced civilization the world has ever known." Many people, through ignorance, were not aware that poverty was the way of life for about one quarter of their fellow Americans. It was a sober time, therefore, in the 1960's when the invisible poor became a fashionable topic of discussion and concern in the national media.[15]

During the administration of President Lyndon Johnson, the War on Poverty was launched and a new era of national awareness saw its inception. The Office of Economic Opportunity was established by Congress to administer the War in all of its facets. Problems of health, education, employment, housing and other blights of poverty were to be attacked by armies of dedicated teachers, doctors, sociologists, economists, community organizers, lawyers, and others. In an expression of national policy, millions of dollars were appropriated to supply these armies with necessary resources to route the age-old problems of poverty.

Legal assistance for the poor was one of the important programs instituted by the Office of Economic Opportunity. Most legal aid officers were placed in areas of urban concentration, whereas few were established in the rural areas where problems and legal approaches are different.

At a later stage in this article, we shall review some of the more important cases which have been brought by rural poverty lawyers in behalf of farm workers.

14. M. HARRINGTON, THE OTHER AMERICA (1962), an analysis of poverty in the United States credited by several national publications with being a major influence in the national drive to wage the War on Poverty.

15. *Id.*, ch. 1.

3. Sanitation and Working Conditions

A. Health, Safety, and Wage Laws

In 1965 the California Legislature passed for the first time laws specifically designed to protect farm workers' health and safety. California Health and Safety Code § 5474.20 provides:

> The Legislature finds and declares that the people of the State of California have a primary interest in the sanitary conditions under which food crops are grown and harvested for human consumption and in the health and related sanitary conditions under which the workers are employed in the growing and harvesting of food crops.
>
> The Legislature hereby finds and declares that the provision of sanitary and hand washing facilities for those employed in the growing and harvesting of food crops is necessary to the preservation of such sanitation and health and that such facilities are necessary to maintain the dignity of such workers.[16]

The code further provides that "food crop growing and harvesting operation" includes any food crop activity or operation in which five or more persons work as a crew for two hours or more.[17]

The health and safety facilities which are required are minimal: toilet and hand washing facilities for each forty employees, or fraction thereof.[18] Toilet facilities must be maintained in a clean, sanitary and fly-free condition, must provide privacy, must contain toilet paper, and must be designed so as to prevent contamination of the crop by human excreta.[19] Hand washing facilities must include clean water and soap or other cleansing agents and must allow disposal of used wash water without creating a nuisance or contaminating the crop.[20] Unless otherwise not possible, toilet and hand washing facilities must be provided at a convenient location, described as within a five-minute walk from the place of work.[21]

Responsibilitiy for the enforcement of California's health and safety laws is distributed very broadly. The primary responsibility is invested in local health officers, but the statute provides that the following *may* also participate in such enforcement: County Agricultural Commissioners, the State Department of Agriculture, the State Department of Public

16. CAL. HEALTH AND SAFETY CODE § 5474.20 (1954).
17. *Id.* § 5474.22.
18. *Id.* § 5474.23, 5474.27.
19. *Id.* § 5474.25.
20. *Id.* § 5474.26.
21. *Id.* § 5474.28.

Health, and the State Department of Industrial Relations.[22] The law makes knowing and wilful violation of these provisions a misdemeanor.[23]

Wages and working conditions for women and minors in agricultural occupations are set forth in Industrial Welfare Commission Order 14-68.[24] The provisions of the Order protect all women and persons under the age 18 who are "employed in an agricultural occupation," defined in the Order. It is applicable throughout the calendar year to any employer who employs five or more persons covered by the Order at any one time during that year. In some respects this Order duplicates the coverage which is found in the Health and Safety Code, *supra*. In particular it requires that employees be provided with clearly marked hand washing facilities at a convenient location, preferably outside of the toilet unit. It also requires that employees be provided with toilet facilities and sets forth standards of adequacy which are comparable to those found in the Health and Safety Code, *supra*. In addition, Order 14-68 requires employers to provide for employees clean, wholesome drinking water and individual drinking cups in lieu of a sanitary drinking fountain.[25] It also requires, inter alia, that employees be provided with an itemized statement in writing showing all deductions from gross wages, that first aid supplies be readily available, that no female or minor male under 16 be permitted to carry more than 10 pounds up a ladder, that no female be required to lift anything weighting over twenty-five pounds (except with a proper permit), that Order 14-68 be posted or, where impractical, be made available, and sets a minimum wage of $1.65 per hour for women and $1.35 per hour for minors 16 and 17 years of age.[26]

The California Education Code provides that minors between the ages of 8 and 16 years must attend full-time school unless they are exempted for particular reasons which are provided by law.[27] No minor under 18 years of age and over 16 years of age, is permitted to work without a Permit To Work issued by school authorities.[28] Moreover, employers

22. *Id.* § 5474.30.

23. *Id.* § 5474.31.

24. I.W.C. Order No. 14-68 is promulgated by the Industrial Welfare Commission of California pursuant to Cal. Labor Code § 1171-1204.

25. Cal. Labor Code § 2441 (1954) supplements Order No. 14-68 in this respect by requiring that employers provide all employees with clean, fresh drinking water.

26. Where wages are paid on a "piece rate" basis shall pay piece rates sufficient to yield not less than the hourly rates shown in (a) and (b) above ($1.65 per hour for women and $1.35 per hour for minors 16 and 17 years of age) to at least eighty percent (80% of the women and eighty percent (80%) of the minors sixteen (16) years of age or over employed in each pay period."

27. Cal. Education Code § 12101 (1955).

28. *Id.* §§ 12304, 12551, 12701, 12702; Cal. Labor Code § 1299 (1955).

must obtain Permits to Employ, issued by school authorities, when employing minors under 16 years of age.[29] Minors under 12 years of age cannot be gainfully employed except, in very limited entertainment capacities, with the consent of the Labor Commissioner or a Superior Court.[30] Failure to comply with the provisions of California's Child Labor Laws is punishable by fine or imprisonment, both under the Labor Code and under the Educational Code.[31] It should be noted also that where a state child labor law conflicts with the Federal Fair Labor Standards Act, the higher standard prevails.

The California Labor Code also contains provisions intended to protect farm workers in their relationship with farm labor contractors. A "farm labor contractor" is a independent contractor who contracts for his services, usually to more than one grower, for a fee which is typically dependent upon the number of farm workers put under his control by the grower.[32] No person may act as a farm labor contractor without being duly licensed by the California Labor Commissioner. A licensed farm labor contractor must pay wages to workers at least once every two weeks.[33] He must also have available for inspection by employees and by the contracting grower, a written statement showing the fee which he is paying to his employees.[34] Furthermore every farm labor contractor must, semi-monthly or at the time of paying wages, provide each worker with an itemized statement in writing showing every deduction made from the employee's wages.[35] The Labor Commissioner

29. Cal. Education Code §§ 12301 and 12304.

30. Cal. Labor Code § 1395 (1955).

31. *Id.* §§ 1303, 1308, 1309, 1391, 1393, 1397.5; Cal. Education Code §§ 12454, 12455, 12456, 12457, 12757.

32. "Farm Labor Contractor" designates any person who, for a fee, employs workers to render personal services in connection with the production of any farm products, to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks, counts, weighs or otherwise directs or measures their work; or disburses wage payments to such persons." Cal. Labor Code § 1682(b) (1954).
"Farm Labor Contractor" also includes a "day hauler", defined as ". . . any person who is employed by a farm labor contractor to transport, or who for a fee, transports by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person." Cal. Labor Code § 1682.3 (1954).

33. Cal. Labor Code § 205 (1954).

34. *Id.* § 1695(5).

35. *Id.* § 1696(5).

is authorized to revoke a farm labor contractor's license if the licensee or his agent violates or wilfully aids or abets any person in the violation of, or fails to comply with, any state law regulating the conditions, terms, or place of employment affecting the health and safety of farm employees or the payment of wages.[36] Moreover, violation of any of these laws relating to farm labor contractors is a misdemeanor punishable by fine or imprisonment, or both.[37]

B. Nonenforcement and Violations of the Law

The average person would look at this impressive list of protective farm worker legislation and conclude that the legislature has done a quite adequate job. Although this may be true, the problems of enforcement, however, are another matter. The measure of a law lies in the extent to which it benefits its intended beneficiaries. Using this standard, the health and safety laws just outlined have not been very successful, practically speaking, in providing the desired protection for farm workers.

Governor Ronald Reagan of California said in December of 1968:

> I believe that California does, and I believe that California should, lead in the matter of assuring fair treatment for our farm workers. But these benefits increase payroll costs. We cannot serve our California farm workers well by being so far in front as to jeopardize the farms which provide those jobs.
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> I call next upon all agencies of government to provide more vigorous enforcement of those laws and regulations now in effect.
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> Finally, I particularly call upon each major farm organization, national and local, to establish written codes of conduct for its members which define minimum employment standards, including, but not limited to wages, hours, rest and meal periods, housing and sanitary facilities; and to establish committees designed to police such standards and hear complaints.
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> . . . .
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> In summary, I am calling upon agriculture for self-help in this matter of public concern. I believe this to be the most effective method for improvement in agricultural working standards. These problems are rarely solved by posting notices or passing laws.[38]

36. *Id.* § 1690(4).
37. *Id.* § 1697.
38. Office of the Governor, Release No. 691, Dec. 3, 1968.

These statements are charged with meaning. Although they call for vigorous enforcement of laws and regulations, their lack of administrative teeth can be garnered from the general tenor of the statements. While recognizing that there are laws and regulations in effect, the governor of California asks that farm organizations embark upon voluntary codes of conduct to protect farm workers. This plan of "self-help" suggests an official atmosphere of nonenforcement, an atmosphere which has been the official agricultural policy of California since the last century.

The nonenforcement of existing health and safety laws and regulations, and other laws to protect farm workers, is the real point of departure if one is realistically to understand the farm workers' situation. The extent of nonenforcement, as indicated by noncompliance with existing laws, has been documented in a recent report to the California State Department of Public Health, the State Board of Public Health, and the Health Officer of each county growing foodstuffs in the state of California.[37] The contents of the report are based upon a three-year study conducted by investigators of California Rural Legal Assistance (CRLA), with the cooperation of farm workers and consumers throughout the State of California. It was filed on behalf of California consumers and farm workers pursuant to sections of the California Health and Safety Code and the California Government Code and contains a request that sanitation facilities be immediately provided in food-producing fields.

The report cites many instances of farm workers defecating and urinating in fields where fresh produce is grown and where employers have failed to provide toilet facilities. For example, a nineteen year-old girl was working in a field where toilets were not provided at any time during an eight-hour day. She stated ". . . other than relieving myself in front of my fellow workers, who were men and women, and rather than cantaminate the sugar beet crop, I tried to control myself but I became sick when I could no longer control myself. I had to leave my job and go home."[38] When one farmer developed an infection on his buttocks, he was informed by his doctor that the infection had resulted from using broccoli leaves as toilet paper.[41] A farm worker of 26 years stated that he had seen innumerable farm workers use the field to relieve themselves when growers had failed to furnish toilets.[42] These are only a

39. *Request for Immediate Action to Provide Sanitation in Food Producing Agricultural Fields*, March 26, 1970.

40. *Id.* at 3.

41. *Id.* at 4.

few not atypical instances of noncompliance with respect to toilet facilities alone, but they are indicative of an across-the-board failure of growers and farm labor contractors to comply with all of the laws intended to protect farm workers.

It is estimated that in 1967 and 1968 eighty to ninety percent of all growers and farm labor contractors were in violation of the basic sanitation and safety laws. In 1969, the rate of violations dropped to approximately fifty to seventy percent as a result of CRLA investigations, publicity, law suits, pressures by the United Farm Workers Organizing Committee, and accelerated enforts of public agencies.[43] In the spring of 1968, farm workers reported 1,869 violations in Monterey County, California, the country's primary producer of strawberries, artichokes, and lettuce.[44] In the fall of 1968, sixty-one instances of multiple violations were reported in Kern and southern Tulare Counties, where a large percentage of the state's table grapes are grown.[45] In a one-month period, August 22 to September 22, 1969, 358 separate sanitation violations were found in Madera and Fresno counties, raisin capitol of the world.[46] The results of other investigations are also cited in the report, and show that field sanitation violations are not restricted to any particular geographic location, but rather that they are found in all of the agriculture areas of California.

It is impossible to know with numerical certainty the extent of the violations because the public agencies charged with enforcement have not done an effective job. Although local health officers are charged by law with the primary responsibility for enforcing the sanitation laws, the vast majority have completely failed to do so. Based upon the 1969 report of the Farm Worker Environmental Health Program, eleven California health departments reported 14,898 violations or defects, including 2,649 toilet violations.[47] Projecting this figure for the entire state of California, it is estimated that there were at least 10,596 and probably more than 15,894 toilet violations *alone* in California in 1969. The report points out that toilet figures are only partly representative of the sanitation problem. Based upon available figures of the Farm Worker Health Service and the California Senate Committee on Health and Safety, the report states that the total number of separate toilet,

42. *Id.* at 2.
43. *Id.* at 14.
44. *Id.* at 12.
45. *Id.* at 12-13.
46. *Id.* at 16.
47. *Id.* at 9-10.

hand-washing, and drinking cup violations was 31,788 in California in 1969. Assuming that an average of ten persons is effected by each separate violation and that each violation lasts an average of two days, the petition concludes that in 1969 there were approximately 635,750 violations of the sanitation laws of California.[48]

There appear to be at least two principle reasons to explain this widespread lack of enforcement by public agencies. First, county health departments are greatly understaffed. When the subject of field sanitation violations is raised in any county health department in California, one quickly learns that the department is charged with a wide responsibility, of which field sanitation is only a part. Public Health Officers will either say that field sanitation is not a problem, or that other health areas have resource priority. The Divisions of Labor Law Enforcement (DLLE) and of Industrial Welfare (DIW) likewise report that they do not have sufficient personnel to do an adequate job of enforcing the sanitation, wage, child labor, and farm contractor laws. While understaffing is a problem, lack of concern for the welfare of farm worker is often found to be an unspoken policy, further preventing the maximum utilization of available personnel to secure the maximum enforcement possible under the circumstances. While the shortage of personnel is denied by no one, the California Legislature in addition is currently under pressure to pass budget cuts which would greatly reduce the already inadequate number of State employees responsible for enforcement.

Secondly, the political climate, as can be inferred from Governor Reagan's statement, *supra*, has always been dominantly pro-farmer. Until the 1965 legislation in California, farm workers were largely unprotected in the statute books. Although the books now contain some laws and regulations intended to protect farm workers, the reality itself has not changed. Evidenced by the wholly inadequate enforcement of these recent laws, the large-scale failure of growers and farm labor contractors to provide basic sanitation facilities supports the conclusion that most of them do not feel that they have to comply with the new laws. Statements such as the following are not atypical: "The growers know that some health departments are just a bunch of cookie pushers who are afraid to come down hard on the law." "I know that the health department isn't going to sic the district attorney on me." "If their investigator does come around, and finds out I don't have a toilet in the field, he'll ask me to get one. That's all. So I figure to wait until they catch me, then put in the toilet for a while, and then not worry about it." "Go ahead and turn in your report. I don't care. I know the people in the

health department. The workers don't need the facilities. They can p--- and s--- in the fields."[49] Such statements from growers themselves are expressions of the laissez-faire climate, vis-a-vis their farm worker employees, which they have enjoyed for generations. Moreover, county health departments have perpetuated this climate by a policy of giving numerous warnings to repetitive violators, in a spirit of what they term "education," rather than in a spirit of impartial and impersonal enforcement. Thus some county health departments do not even undertake field investigations on their own initiative. When they do, they fail to conduct effective field checks and are scandalously permissive in requiring actual compliance.[50]

C. Farm Workers go to Court.

Because of the failure of adequate law enforcement, farm workers have taken their grievances to the courts, seeking private civil remedies for injuries sustained by them on account of poor sanitation conditions. For example, in the case of *Perez v. Morales*,[51] plaintiff farm workers sought actual and punitive damages for the humiliation, physical discomfort and mental and emotional distress caused by defendants' violations, and sought to enjoin defendants' noncompliance with the sanitation laws on the theory of nuisance. Other similar cases have been filed by farm workers.[52] If government-agency enforcement in this area were the rule, rather than the exception, farm workers would have no need to seek private redress to secure the basic sanitation facilities to which they are entitled by law.

In late 1969 it was held in *Gomez v. Florida State Employment Service*[53] migratory farm workers are entitled to protection under Federal law. Plaintiff migratory workers accepted job requests filed by the Florida Staze Employment Service. The wages and housing conditions provided them fell below those called for by standards in the Federal Wagner-Peyser Act of 1933, 29 USC § 49, the basic objective of which was to establish a system for the recruiting and transfer of

48. *Id.* at 11.

49. *Id.* at 22.

50. *Id.* at 22-29.

51. Perez v. Morales, No. 100602 (Cal. Super. Ct., Stanislaus County, filed Sept. 11, 1968).

52. Manriquez v. Mosesian, No. 105175 (Cal. Super. Ct., Kern County, filed Feb. 13, 1969); Garcia v. Kovaceirch, No. 105072 (Cal. Super. Ct., Kern County, filed Feb. 3, 1969).

53. Gomez v. Florida State Employment Service, No. 26719 (5th Cir. Oct. 9, 1969).

labor. Although the Act did not specifically grant plaintiffs a remedy, the court implied a private civil remedy and held that a cause of action was stated against the employer who submitted a request for workers with the Florida State Employment Service, on the basis that he had a duty not to mislead state officials when applying for workers.

Although farm workers and agricultural farms are not covered by the National Labor Relations Act, in California it has been held that an employer who fires an employee for union activity must not only rehire him, but may also be forced to pay punitive damages for the discharge. In *Wetherton v. Martin Produce, Inc.*,[54] nine farm workers, all members of the AFL-CIO United Farm Workers' Organizing Committee, challenged their firing which they alleged deprived them of their rights to full freedom of association, self-organization, and designation of representatives of their own choosing and of their rights to be free of interference, restraints and coercion of their employers as provided by California Labor Code § 923. The Growers Farm Labor Association and the Grower-Shipper Vegetable Association were joined as defendants against which plaintiffs sought reinstatement, seniority, protection of their right to organize, and actual and punitive damages. In return for dismissal of the suit with prejudice against defendants, the parties entered into a settlement agreement whereby all nine farm workers would be rehired, paid damages, guaranteed a minimum wage of $4500 per year (if defendant Martin's gross income maintained a certain specified level) and would be given seniority over all carrot harvesting work available. It was also agreed that plaintiffs were not to be terminated except for good cause and that the American Arbitration Association ould arbitrate any future disputes between the parties.

As pointed out earlier, farm workers are excluded from unemployment insurance compensation benefits under state and federal law.[55] To date, legal efforts to extend coverage to farm workers have been unsuccessful. However, the case has been presented to the court in *Romero v. Wirtz*.[56] This was a class action for declaratory and injunctive relief to extend unemployment insurance coverage to farm workers in California. The first plaintiff was a farm worker; the second had been employed as a maintenance man and kitchen assistant by a large "agricultural" firm, but at the time of the complaint was doing the same work for a nonagricultural employer. Both workers were denied

54. Wetherton v. Martin Produce, Inc., No. 63696 (Cal. Super. Ct., Monterey County, filed Aug. 25, 1967).

55. Cal. Un. Ins. Code §§ 625, 626, 627; 26 U.S.C. § 3306(c).

56. Romero v. Wirtz, No. 50213 (N.D. Cal., filed Oct. 29, 1968).

unemployment insurance benefits. The first was denied because as a farm worker he was not included by statute. The second was denied because of the "agricultural" status of his earlier employer, even though he was later covered for performing the same duties for his "nonagricultural" employer. The complaint was based upon a denial of due process and equal protection of the laws and upon violation of the Fifth and Fourteenth Amendments to the Constitution. It alleged, moreover, that the exclusion of farm workers and other persons employed on farms from unemployment insurance coverage discriminates against Mexican-Americans who constitute 75% of the California farm worker force. It states that agriculture today is dominated by large, mechanized, commercial farms and not by small individual farms which dominated the scene some 33 years ago when the initial unemployment insurance legislation was enacted, and when the exclusion of farm workers might have been justified on practical grounds.

Most farm workers have experienced the disappointment and humiliation of being referred by state officials to work for employers who are in violation of the health, safety, and wage laws. One case has been successful in requiring the California Department of Employment (now known as the Department of Human Resources Development) to investigate field conditions before referring workers to do farm work.[57] The petitioner in that case had been employed as a farm worker and field foreman prior to accepting jobs covered by Unemployment Insurance Compensation. He was, therefore, familiar with the fact that virtually every grower in the Salinas, California area in the spring of 1968 was in violation of state health and sanitation laws. He became unemployed and in April of that year the Department of Employment, through the Farm Labor Office, ordered him to accept farm work or lose his eligibility for unemployment insurance benefits. The petitioner agreed to accept such employment if he were assured by the Department that the employer to whom he was referred was not in violation of California health and sanitation laws. However, the Department refused to give him any such assurance, despite Labor Department regulations which prohibit the Department of Employment from referring any farm worker to any grower in violation of any Federal, State, or local law, including health and sanitation laws,[58] and despite similar rules of the

57. Munoz v. California Department of Employment, No. 191631 (Cal. Super. Ct., SacramentoCounty, filed July 3, 1969).

58. 20 C.F.R. §§ 604.1(j) and (k).

Department's own promulgation.[59] The court agreed with plaintiff's contention that danger to his personal health constitutes good cause for refusing employment. The court ruled that the Department had the affirmative duty and burden of ascertaining suitability of agriculture employment since it could obtain the information more easily than farm workers, in view of the distances involved and the alleged widespread health and sanitation violations in the area.

A recently filed class action brought in behalf of California's 260,000 farm workers seeks to either close all forty-two federally-funded California Farm Labor Offices or compel them to operate under a "Fair Employment Plan" by July 1, 1970.[60] It is brought against the U.S. Secretary of Labor, the Director of the California Farm Labor Service Division, and against local California Farm Labor Office managers. Because of its far-reaching potential implications, i has been described by one of the defendants as perhaps one of the most important cases ever brought in this area. Plaintiffs cite federal regulations which provide that no federal funds shall be provided to any state Farm Labor Office which fails to "adhere to the basic standards set forth as United States Employment Service policies."[61] The suit alleges that the Farm Labor Office is grower-controlled, grower-dominated, grower-staffed, anti-farm worker and normally refers workers to growers who refuse to obey State laws. Plaintiffs contend that farm worker wages and working conditions are actually depressed by the existence of the Farm Labor Offices because it knowingly subsidizes growers who violate sanitation, safety, and wage laws. The Fair Employment Plan proposed by the farm workers would require joint farm worker-grower control of the California Farm Labor Offices for a period of not less than two years beginning July 1, 1970. In addition it would prohibit Farm Labor Offices, *inter alia,* from referring workers to growers who refuse to provide sanitary facilities, the highest prevailing wages, and a guarantee of forty hours work. The suit acknowledges, in effect, that farm workers would be no worse off if California's forty-two Farm Labor Offices, as they are presently operated, were discontinued altogether.

We have noted earlier the presence of hundreds of thousands of illegal aliens with whom domestic farm workers must compete for jobs. Aside

59. STATE DEPARTMENT OF EMPLOYMENT, LOCAL OFFICE MANUAL: FARM PLACEMENT OPERATIONS; MANAGEMENT AND SUPERVISION, §§ 2104, 2106(9), 2106(10), 2139(3), 2139(4), 2140, 2153, 2159(3), 2160(6).

60. 250 Santa Clara, etc., Farm Workers v. Schultz, No. C70-481 (N.D. Cal., filed March 5, 1970).

61. 20 C.F.R. § 603.4.

from costing the taxpayers millions of dollars in additional welfare benefits due to the unemployment caused by the presence of illegal farm workers, their presence has thwarted the implementation and effectiveness of domestic farm worker organization. It has provided growers and farm labor contractors with a cheap source of labor which is willing to work under conditions and for wages which are unlawful, to the detriment of United States farm workers. While growers deny any responsibility for this convenient arrangement, farm workers see it as a conspiracy of public and private grower interests to perpetuate their degradation.

In 1969 a series of cases was brought in California in an attempt to stop the importation of illegal aliens into the agricultural labor market. The actions were brought in behalf of farm workers as a class, and in behalf of the general public, against grower-employers and farm labor contractors. Asking for damages and injunctive relief, the actions are founded principally upon the theory of unfair competition under California Civil Code § 3369. They also contain counts based upon traditional equitable and tort doctrines and upon implied civil violations of federal criminal statutes. The plaintiffs allege that U.S. Immigration and Naturalization statistics show that 151,705 illegal aliens, primarily Mexicans seeking agriculture employment, were apprehended in the United States by the Border Patrol in 1968. It is estimated by federal labor sources that for every "wet-back" apprehended, two go undetected. Thus, in any given year, there are approximately 450,000 illegal aliens working primarily in American agriculture, constituting as much as twenty percent of the primary California agricultural work force. Plaintiffs complain that defendants' knowing and illegal acts of unfair competition cause unemployment, under-employment, and depression of wages and working conditions. While none of these cases has been tried on the merits, several have been dsmissed for failure to state a cause of action under Civil Code § 3369. Two of those cases, however, have been appealed, and they ask for a writ of mandate to require the trial courts to exercise jurisdiction as to the causes of action based upon § 3369.[62]

Additional areas of vital concern to farm workers will only be mentioned here, but they are areas in which, the court almost certainly will be asked to become more deeply involved. For example, farm workers are seriously concerned over the nonenforcement of laws and regulations relating to the use of pesticides which pose grave health and

62. No. 3 Civ. 12547 (Cal. Dist. Ct. App. 3d. App. Dist., filed March 2, 1970).

safety dangers. In the area of mechanization, much research, legal and otherwise, remains to be done, to answer such questions as: Are the resources of public educational institutions being used to subsidize growers by developing machines to displace farm workers? What is being done to relocate farm workers who are displaced by mechanization? What is being done to assure that new machines are as safe as possible for those farm workers who are to operate them? In addition, new ways must be found by government and by the private sector to plan and to promote programs of economic development for the farm worker in rural areas.[63] At the same time, there must be a reevaluation of government subsidy programs, as to the propriety of both outright grower subsidies and of subsidies in the form of abused federal reclamation water rights.[64]

These issues are only suggestive of some of the more crucial problems which face farm workers as an occupational group. While rural legal assistance programs have begun to raise some of these issues in the courts and before administrative and other agencies, there are many aspects of the farm workers' plight which are not amenable to strictly legal approaches. It is hoped that there will be an ever-increasing sharing of knowledge and integration of resources among poverty lawyers and experts in the social and behavioral sciences. Insofar as resort to the courts has been successful in contributing to a far greater national awareness of the farm workers' condition, legal services have performed an invaluable service to society. To the extent that legal services have actually affected the quality of farm workers' lives, they should continue to be a viable and responsive resource in the future, ever seeking new and imaginative ways to secure the rights to which farm workers are entitled by law.

4. Conclusion

We have surveyed some of the more important conditions concerning farm workers in the United States today, and have seen how farm workers, as an occupational group, differ from other major occupational groups, thereby giving rise to the need for an enlightened approach to their unique problems. The modern farm worker leads his life in much the same way as his ancestors did, and his current plight dates back many generations. But the context is different. This is the era of mass

63. *See generally* Comment, 42 So. Cal. L. Rev. 701 (1969).

64. For a good discussion of government subsidy policy as reflected in the federal reclamation program, see Sax, *Selling Reclamation Water Rights: A Case Study in Federal Subsidy Policy*, 64 Mich. L. Rev. 13 (1965).

communications, of increased sensitivity to the rights of underprivileged minorities, of greater group awareness of individual and group rights, of the War on Poverty, and of the Office of Economic Opportunity. This new era has ushered in a host of dedicated specialists who have set upon doing their parts to eliminate the causes and effects of poverty in both the cities and in the rural areas.

The rural legal services programs are still relatively new, and there are few of them in comparison with the urban programs. Nevertheless, the record of the rural programs has been a vigorous one which appears to have had a high measure of success in advancing the legal equities of farm workers. Although many cases have yet to be decided or brought, the trend of success will undoubtedly continue, so long as government appropriations for such programs keep faith with the national policy of eliminating poverty.

The fight for farm workers' rights will continue to be an upward fight. Although health, safety, and wage laws have been passed in California for their protection, it has been seen that those laws are seldom enforced effectively, if at all. It is a disturbing realization that the public agencies charged with the enforcement of these basic laws of decency, aside from being understaffed, are all too often totally apathetic about their responsibility. If we add to this the fact that the political climate in agricultural policy has always been predominantly pro-grower, it is manifestly clear that the farm worker is going to have to fight for every right he will ever enjoy.