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Migrant Housing—A Step Backward?

A major effort has been made during the last century to open opportunities for previously oppressed men and women in the United States. There remains, however, a large number who lack the most elementary of these opportunities and whose plight has attracted relatively little attention: our migrant farmworkers;¹

My name—Joe Hayes.
Crewleader—Shorty.
What is ma trouble?
Lady, don't say it like that.
I come for hep, not pity.
My back is sore, my feet hurt,
I ain't eat nuttin' but cukes all week.
That's what we're pickin',
And now I got the belly ache.
I know I stink.
Ain't nuttin' but cold water at the camp.
And I got no clothes.
Next of kin? Lady, ain't nobody cares where
I am or if I die.
Just put down Shorty; he's ma crewboss.
Home address? I lef out Mississippi eight years ago.
I don't know where home is.
I guess the camp's home, Route 5, Dunn.
Two dollars, I can't pay. Lady!
That's why I come to this clinic.
You'll see me anyhow.
Thank ya, ma'am.
I do need to see the docta.
Gotta work this week.
Then the cook'll let me eat.
Number 18. Thank ya ma'am.²

Generally, the 1.5 million migrant farmworkers are subjected to deplorable living conditions³ and have been systematically excluded from protection under

1. Givens, *Legal Disadvantages of Migratory Workers* 16 LAB L. J. 584 (1965).

2. Poem written by Juanita Morrison of Johnson-Sampson County Migrant Clinic, Sampson County, North Carolina.

3. *Gomez v. Florida State Employment Service* 417 F.2d 569 (5th Cir. 1966). The court found that migrants had no running water in cabins, no working toilets, no garbage pickup or disposal system, no access to drinking water, no working showers, no heat in cabins, and no electricity in their cabins. See also *Michigan Housing Study: Hearings on Migrant and Seasonal Farmworker Powerlessness Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 91st Cong., 1st & 2d Sess., pts. 1-8c (1969-70).

many state and federal programs.⁴ History discloses that their migratory nature is the reason that migrants have traditionally been excluded from such programs.⁵

The plight of migrant farmworkers has been viewed with a minute degree of optimism recently. Federal legislative programs, designed to deal specifically with migrant problems, have been given vitality.⁶ Additionally, governmental and nongovernmental organizations are developing programs to decrease the unjustified discrimination imposed on migrant farmworkers.⁷ These groups have emerged as the only champions of the migrant cause.

Section 2044 of The Farm Labor Contractors Registration Act specifically provides safeguards for housing migrant farmworkers by crewleaders who own or control housing.⁸ Crewleaders may obtain a certificate of registration without getting authorization to arrange housing.⁹ In order to acquire housing authorization subsequent to receiving a certificate of registration, a crewleader must submit an application to the Department of Labor¹⁰ not more than 60 nor less than 30 days before the use or occupancy of such housing.¹¹ This 30-to-60-day requirement was eliminated by a recent change published in the Code of Federal Regulations.¹² The purpose of this comment is to analyze the possible

4. The National Labor Relations Act, 29 U.S.C. § 152(3) (1964) specifically excludes migrant farmworkers. Also, The Fair Labor Standards Act, 29 U.S.C. § 203(e) has a 500 manday limitation that restricts many deprived migrant workers from seeking legal recourse under its provisions [hereinafter cited as FLSA].

5. Several factors are cited as reasons why migrant farmworkers have been left unprotected by state and federal governments: (1) their mobility leaves them with no voting power and thus, no political power and thus, no political power; (2) migrants are unaware of the few rights available and thus, do not complain when such rights are violated; (3) many migrants have little faith in our legal system for redress; (4) many are Spanish-speaking and the language barriers prevent articulation of grievances; (5) migrants have no one to champion their cause and; (6) most migrants are destitute and cannot afford legal help.

6. The Wagner-Peyser National Employment Act, 29 U.S.C. § 49 (1933) which in cooperation with state controlled employment services creates a system for interstate recruitment of farmworkers, was given life with Gomez. The court held that migrant farmworkers, pursuant to the Act, could seek remedies for violations of their rights when they accept employment through a system set up by the Act.

FLSA was specifically amended in 1966 to include migrant farmworkers. See Fair Labor Standards Amendment of 1966, 80 Stat. 830 (1966) (/) current version on 29 U.S.C. § 203(e) (Supp. III (1965-1967)).

The Farm Labor Contractors Registration Act [hereinafter cited as FLCRA] was amended in 1974 because the Act had been ineffective in curing the evils of its design. The Amendment was passed to put some teeth into the Act. See S. REP. No. 93-129b, 93d Cong., 2d Sess. 4 (1974).

7. Many Legal Services have developed migrant programs. Florida Rural Legal Services, Winter Haven, Florida, has an excellent and very effective migrant program. Additionally, Migrant Legal Action Program, Inc., Washington, D. C., employs full-time attorneys to work with various programs that deal with migrant legal problems.

Non-governmental groups have made significant contributions to the migrant cause. A few of these groups include Concerned Citizens for Migrants of Michigan, Inter-faith Committee to Aid Farmworkers, National Farmworkers Ministry, and Organized Migrants in Community Action.

8. 7 U.S.C. § 2044(b) (5) (1976).

9. 29 C.F.R. 40.20 (b) (1977).

10. The Department of Labor is hereinafter cited as DOL.

11. See note 9 *supra*.

12. 43 Fed. Reg. 44839 (1978).

implications of this change on migrant farmworkers as they struggle to make living and housing conditions bearable.

I. MIGRANT HOUSING

Migrant farmworkers usually live in housing provided through arrangements made between the grower and the crewleader. Generally, all housing is located in one central location on the grower's land.¹³ Deplorable conditions usually exist in every conceivable aspect of camp life.¹⁴ The structure is a cabin, abandoned motel, shed, farm house, barn, quonset hut, chicken house, bus trailer, or garage. The problems associated with such housing structures are leaking roofs and floors, overcrowding, broken windowpanes, torn window screens or no window screens at all inadequate ventilation, no heat, and no electricity.

The camp area is equally offensive to human dignity. The site is usually in a remote and wet location where there is improper drainage. This results in a large number of mosquitoes. The lack of a garbage disposal system encourages the accumulation of trash, junk, garbage, and filth throughout the camp, increasing the already huge fly population. The water supply is often inadequate or unsafe for human consumption. The water is taken from gisterns, springs, ponds, open streams, hand pumps, or open wells. Often these water sources are located near privies or out-houses. Water may also be taken from the grower's home to the camp in large garbage cans. The toilet and bathing facilities are also deplorable. There is little, if any, hot water, few if any, showers, and an inadequate number of toilets with improper ventilation and lighting. Additionally, the lighting is poor along pathways to and from toilets.¹⁵

Some of these deplorable conditions were exemplified by the experiences of one scholar:¹⁶

My house was in the central part of the camp in the Indian section. The inside had not been cleaned since last occupied and the former tenant had left a few jars of pickles, chile, and other spicy food-stuffs, the rotting smell of which permeated the place. The floor was thick with dust and particles of decaying food. There were two rooms, each about twelve by eighteen feet. The front room contained a large wooden picnic table with benches, a gas stove, small enamel cups and plates, a wash bowl, a frying pan, and some eating utensils. In the rear room were

13. These locations are commonly referred to as migrant labor camps [hereinafter cited as labor camps].

14. For an excellent discussion of the deplorable housing conditions, see L. RENO, *PIECES AND SCRAPS: FARM LABOR HOUSING IN THE UNITED STATES*, Powerlessness Hearings, *supra* note 3, at 5652-5798; "Migrants in the Streams of Despair", WFM-TV Channel 2, Greensboro, North Carolina (12 October 1977).

15. This is not to imply that all labor camps are bad per se. There are some exceptions, a model modernized camp is located on John's Island, Charleston County, South Carolina on the farm of H. P. Walpole.

16. J. Chase, Assistant Professor of Law, University of Colorado School of Law, who spent three weeks as a migrant in a labor camp. See 40 *COLO. L. REV.* 45 (1967).

about six army-type cots covered with stained stinking mattresses. I spent the first night sleeping in my car, ostensibly because the house was so stuffy, but really because I couldn't stand the filth and smell. Even after I cleaned the front room of my house and began to sleep there, I was sufficiently squeamish that I slept on an air mattress which I had brought rather than the mattress provided. My source of water was a standpipe in front of the house which children enjoyed playing with during the day. . . . The central washroom contained his/her lavatory facilities. In the men's room there was a row of about twelve unclosed toilets to the left and several basin-type urinals to the right. The room was filled with stench more usually associated with out-houses. There was another room containing sinks and laundry tubs, at the end of which was the entrance to the men's showers. The drain in the shower room was plugged and almost the entire floor was covered by water thick with filth which one had to walk through to get to a shower. The stench from the lavatory found its way into the shower room and the combined smell of feces and putrid water rendered taking a shower almost intolerable. These, then, were the living quarters at the camp.¹⁷

There are three basic reasons why housing conditions are so deplorable. First, there are inadequate sanitary and housing regulations by state and federal governments.¹⁸ The few states that do have regulations have no viable enforcement programs. Enforcement is fragmented among local health code personnel. The laws are either too weak or too vague for effective enforcement. State officials are unwilling to make any visits that amount to more than a general health inspection. They are simply reluctant to crack down on these flagrant abusers of human dignity. Many officials refuse to admit that conditions in the labor camps are bad, and those that do see the migrant farmworker as the responsibility of the federal government.¹⁹

Second, the housing conditions may be attributed to the refusal by the grower and the crewleader²⁰ to correct the problems. Growers usually rely on economic arguments for not providing better facilities. They contend that providing adequate housing places an unbearable economic hardship on them, especially since housing is used for limited periods during the year.²¹ It is difficult to convince a grower that better housing is good economics. Typically, growers feel that migrants are lazy and that little or nothing can be done to increase productivity.²² They stigmatize migrant farmworkers as "just workers", something less than humans. The contention is that if new camps were furnished to migrants,

17. *Id.* at 47-48.

18. Although Title 20 of The Code of Federal Regulations establishes federal housing guidelines, these guidelines are not strictly enforced.

19. "Migrants in the Stream of Despair", *supra* note 14.

20. Consideration is given to the crewleader below. This section is directed to the reluctance of the grower to improve housing conditions for migrant farmworkers.

21. Interview with William Mitchell, camp owner in Charleston County, South Carolina, in Charleston, South Carolina (June. 17, 1978).

22. *Id.*

within a matter of months, the new camps would be wrecks.²³ Many growers maintain antagonistic attitudes toward any visitation of labor camps on their land.²⁴

Finally, migrant farmworkers migrate out of necessity. Due to their migratory nature and disenfranchised status²⁵ migrants have little to say about their plight. A basic oversupply of labor, caused by a large influx of illegal aliens and those with lawful permission to work in the United States while living in bordering nations,²⁶ seriously frustrate any efforts to bring housing and working conditions to a level comparable to those of other workers in America. As a direct result of this oversupply situation, migrants are faced with difficult choices. These choices are simple: work under existing housing and living conditions or join the ranks of the unemployed. Since most migrant farmworkers are unskilled, the choice to work under deplorable conditions is the lesser of the two evils.

II. THE CREWLEADER

The crewleader,²⁷ in most instances, is the most important individual in the farm labor system. He knows where the jobs are and provides the employment contact with growers. The crewleader induces the farmworkers to work, often at great distances from their homes, by making affirmative representations as to wages, housing, and living conditions. He usually provides food, advancements, transportation, housing, and necessities for farmworkers en route to areas of employment. It is not uncommon for a crewleader to start in Florida with a crew and migrate through Georgia, South Carolina, North Carolina, Virginia, New York, Iowa, and then back to Florida during a working season.²⁸ There were more than 8,000 registered crewleaders in the United States in 1978.²⁹ Since crewleaders exercise substantial control over their crews, migrant farmworkers are wholly at the mercy of their crewleaders once the working season begins. This unprecedented power and control by the crewleader is maintained through a number of ways, including firings, threats, and physical coercion.³⁰

Because of this influence and control, migrants are frequently subjected to abuses.³¹ Crewleader abuses are usually in the form of misrepresentation of

23. *Id.*

24. See *Mid-Hudson Legal Services v. G & V, Inc.*, 437 F. Supp. 60 (1977).

25. See note 5 *supra*.

26. See Commutes, *Illegals and American Farmworkers: The Need for a Broader Approach to Domestic Farm Labor Problems* 48 N.Y.U.L. REV. 459 (1973).

27. The crewleaders, also referred to as farm labor contractors, are persons or entities who supply farmworkers to ranches or farms of agriculture producers in the United States who have declined for economic reasons to directly recruit and hire their labor for cultivation, harvesting, or processing of crops. See 7 U.S.C. § 2042(b) (1976).

28. Interview with Edward Green, migrant farmworker and plaintiff in *Green v. Williams*, No 78-1086 (D.C. S.C., filed Jun. 30, 1978), on 24 June. 1978).

29. The Wage and Hour Division of DOL updates monthly the list of registered crewleaders in the United States. See Farm Labor Contractors Registration Act, Public Registry, January 1, 1978—December 21, 1978.

30. See note 14 *supra*.

31. See 1964 U. S. CODE CONG. & AD. NEWS, 3690.

working conditions, excessive deductions, furnishing substandard housing, overcharging for transportation and advancements, abandoning workers without pay, overcharging for meals, using and exploiting illegals, and making unauthorized deductions from the farmworker's pay. Recognizing the potential for abuse, Congress passed The Form Labor Contractors Registration Act (FLCRA)³² which *inter alia*, specifically mandates that crewleaders refrain from using real property to house migrant farmworkers when such real property fails to conform to all applicable federal and state safety and health standards.³³ Since the 1974 amendments to FLCRA, this section provides the Department of Labor with the power of sanction against crewleaders who violate it.³⁴ Additionally, the farmworker has a viable private cause of action.³⁵ Many crewleaders are simply not concerned or do not have the time to address migrant problems. Crewleaders could play a major role in improving living conditions for migrants, in that they hold the bargaining power with the growers.

III. THE CHANGE—ITS RATIONALE AND IMPLICATIONS

The registration procedures for authorization to house migrant farmworkers, after issuance of a certificate of registration, explicitly establish a requirement that applications be submitted not more than 60 nor less than 30 days before use or occupancy of such housing.³⁶ This system provides a check on a system that is vulnerable to abuse by the crewleader. In substance, it requires more than mere gestures of good intention by crewleaders.

FLCRA makes it unlawful for a grower to employ a crewleader that is not registered for housing.³⁷ The change seems to provide a way around this dilemma. The regulation, after the change, requires only that the applicant crewleader attest in writing that migrants will not be housed in property that fails to meet health and safety codes.³⁸ The change removes the necessity for the crewleader to plan and pre-determine suitable housing for his crew. The elimination of the time requirement makes it easier for the crewleader to arrange housing without fear of sanctions, and may, in some cases, abrogate the \$500 statutory penalty for violation of the statute. The change allows the grower to continue to provide poor housing for migrant farmworkers under the design that it is managed and controlled by the crewleader.

The rationale behind eliminating the time provision was that it placed a requirement on crewleaders which was burdensome and difficult to meet.³⁹ The

32. FLCRA was enacted for the purpose of preventing exploitation of migrant and seasonal farmworkers by farm labor contractors. It, among other things, requires all persons who recruit, solicit, hire, transport, or house migrant farmworkers for a fee to obtain from DOL a certificate of registration.

33. 7 U.S.C. § 2044(b) (12) (1976).

34. 29 C.F.R. §40.16(9) (1977).

35. 7 U.S.C. §2050a(a) (1976).

36. See note 9 *supra*.

37. 7 U.S.C. 2043(a) (1976).

38. See note 12 *supra*.

39. *Id.*

Department of Labor reasoned that elimination of the requirement would increase utilization of the domestic work force, thus helping to decrease the high unemployment in the United States.⁴⁶ It contends that a rule change allows a greater number of crewleaders to register for housing which facilitates contractual agreements with growers, resulting in an increase in employment opportunities for American workers.⁴¹

CONCLUSION

In 1978, the Department of Labor made changes that eliminated the requirement that migrant labor camps be inspected for compliance with safety and health standards prior to the arrival of migrant farmworkers.⁴² The recent change in conjunction with the previous changes, indicates a definite trend backward for migrant farmworkers in the area of housing. The Department of Labor's rationale for the change is suspect, considering few skilled people are willing to work at wages that migrant farm workers are paid. Even the unskilled would find existing conditions in labor camps deplorable and offensive to human dignity. However, if the Department of Labor is correct in its assessment, more Americans from the domestic work force might trigger greater concerns for the plight of migrant farm workers.

It should also be noted that the change was made law upon its first appearance in the Federal Register.⁴³ This disguised, but apparent, trend seems to be indicative of attitudes catering to the already powerful (both politically and economically) grower. The deletion is designed to facilitate contractual agreements between crewleaders and farmers. However, its practical result is a weakening of the regulation, rendering it virtually ineffective. The incentive for planning and prior arrangements for housing by crewleaders has been eliminated. The newly weakened regulation is likely to do more to encourage further abuses by crewleaders. The change represents a definite step backward for the migrant farmworkers, a group that is already underprotected and illhoused.

Pre-occupancy inspection of labor camps emerges as the only logical solution if the standard of migrant housing is to improve. Once a crew moves into deplorable housing it is all but impossible to get any type of relief. This problem is aggravated by the fact that the workers are transient and the stay in such housing is short-term. Post-occupancy inspections, grower certification, state regulations, and Occupational Safety and Health Act (OSHA) citations have all proved ineffective. In light of existing housing conditions, it seems that efforts should be made to make qualifications under FLCRA more stringent.

Affirmative steps must be taken to insure that the plight of migrant housing will not continue to be determined by the lobbying efforts of the powerful

40. *Id.*

41. *Id.*

42. 43 Fed. Reg. 36058 (1978). The change was to 20 C.F.R. § 620 (1978) deleting the requirements for pre-occupancy inspections. In *Molina v. Marshall*, No. 78-0651 (//), D.D.C., filed Apr. 11, 1978 (//) twenty-four migrant plaintiffs filed for declaratory and injunctive relief against DOL because that change was published without an opportunity for comment. See also 43 Fed. Reg. 39124 (1978).

43. See note 12, *supra*.

grower. Litigative lobbying and other pressures should be intensified to insure that the few existing rights of migrant farmworkers will be safeguarded. Stronger federal and state codes and regulations should be enacted to aid this effort. Additionally the Department of Labor should insure aggressive enforcement of compliance with existing regulations designed to eradicate the deplorable living conditions of migrant farmworkers.

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