The National Lawyers Guild
NEWSLETTER of the
Labor and Employment Committee

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Hamlet NC Tragedy - Struggle for Safety Continues

by Anthony Prince

September 3 marked the tenth anniversary of a deadly fire that claimed 25 lives as it swept through Imperial Foods Processing in Hamlet, North Carolina, in 1991, killing and injuring scores unable to escape because doors had been illegally padlocked. The plant, which processed chicken nuggets for the fast food industry, became an infernal tomb as flame and toxic smoke spread rapidly after a hydraulic line ruptured. The toll included 56 others who were burned, maimed or suffered permanent respiratory and brain damage. In the wake of plant owner Emmet Roe's shameless criminal acts, dozens of children became orphans, survivors were psychologically tormented by recurring nightmares, and jobless workers were abandoned when Roe closed the plant, the second largest employer in the little town sixty miles southeast of Charlotte.

Months after the fire, as a result of North Carolina's first ever criminal prosecution for a work-related fatality, Emmet Roe pled guilty to 25 counts of involuntary manslaughter and was sentenced to 19 years 11 months in prison. **He would serve less than four years before being paroled, an average of 67 days per worker killed.**

The *cause-in fact* of the tragedy was a ruptured conveyor line which spewed highly flammable hydraulic fluid onto a gas-fired deep-fat chicken fryer. The fluid touched off a fast moving fire and billowing, poisonous smoke. In reality, the stage had been set by Roe's having personally ordered fire exit doors locked, allegedly to prevent workers from stealing chickens, and the failure of the state's OSHA agency to conduct a single inspection of the plant. There was no sprinkler system and the one fire extinguisher installed over the fryer as a result of a 1983 non-fatal blaze failed to operate.

Desperate, workers tried unsuccessfully to kick open the illegally locked doors, leaving smoky shoe prints still visible months afterwards. Others sought refuge behind the massive doors of two huge flash freezers; ironically, as others choked on smoke and burned from the flames, they quickly froze to death in temperatures reaching 28 degrees below zero. I**t was the worst industrial fire since 1911 when 146 died in the Triangle Shirtwaist Factory disaster in New York City.** There, too, plant owners had locked exit doors and trapped the helpless workers, almost all of them women.

On Workers Memorial Day, May 2, 1992, I marched in Hamlet alongside hundreds of residents and trade unionists from throughout the South to *honor the dead and fight like hell for the living*. As the former safety chairman for United Steelworkers Local 65 in Chicago, I witnessed firsthand the agony of men burned alive at U.S. Steel's giant South Works. I saw Paul De La Garza's charred corpse curled into a fetal position after 200 tons of liquid death had spilled onto him from an overhead crane in the basic oxygen furnace one day before his retirement. I held the trembling hand of Luis Benavides, a 27-year old co-worker swathed head to toe in bandages as if he were a mummy. Languishing for five months in the burn unit before finally dying, Luis had been engulfed by a 2,000 degree fireball while trying to save the life of another steelworker from magnesium aluminum pouring out of a defective valve. I visited widows and attended funerals and stood vigil at hospital bedsides. I thought I was prepared for what I might see in Hamlet. I was wrong.

Editor's Note: Every member of the NLG L&EC mourns those who died on Tuesday September 11. We also admire the selfless courage of those who gave their lives on the job and in the rescue efforts - the hundreds of public safety workers, firefighters, police, rescue and medical personnel, the pilots, flight attendants, federal government employees, construction workers and others.

Before the event the lead article was this one about another workplace tragedy; we decided to retain it.

We could not on such short notice prepare an article to explain logically this catastrophe. However, even if never fully explained, **we remain committed to the view that the solution is not through escalating cycles of retaliation, hatred and violence**. And we believe that against all odds humanity will find a resolution.

For information about ways to help, see the AFL-CIO website at www.aflcio.org. The AFL-CIO's national Union Community Fund has issued an appeal to assist those most in need, and has established a special fund to accept donations from our working families. Checks should be payable to Union Community Fund and designated for the September 11 Relief Fund. Mail to the Fund at 815 - 16th Street NW, Washington, DC 20006. ***Fran Schreiberg***

Public Pressure Drives Prosecution

For months, Hamlet residents, unionists and human rights activists had been pressuring prosecutors to file charges. These efforts were to culminate in a mass march through Hamlet on May 2, 1992, Workers Memorial Day. As that day drew near, the grand jury in Monroe finally returned a manslaughter indictment against Emmet Roe, his son and Imperial Foods Director Brad Roe, and James Hair, the plant manager.

Days before, shouting and chanting through the narrow streets of this small town, the orphaned children of Imperial Foods' victims marched alongside trade unionists from throughout the South and from as far away as Oregon and Chicago. Blacks marched alongside whites, skilled tradesmen beside day laborers and farmworkers. The march took place against a backdrop of nationwide outrage and unfolding rebellion in the aftermath of the acquittal of the L.A.P.D. in the Rodney King case. **The message was not lost on many in the crowd: life in America was cheap, particularly the lives of minorities and poor people**, the people who had worked and died for the minimum wage at Imperial Foods. Finally, a group of us left the march and headed for the plant. I will never forget what I saw there.

Despite the fact that it was a crime scene, despite the fact that its owners had been formally charged with homicides, Imperial Foods stood open and unguarded. Thin shafts of sunlight poking through the smoke-blackened corrugated roof barely lit our way as we gazed at the wreckage. We could only imagine the horror of that fateful day. Making our way to the lunchroom, paper bags, wax paper and the half-eaten sandwiches of the dead were still on the table. **Most haunting** and damning were the shoe prints and scuff marks on the locked exit

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c/o Kazan McClain et al., 171 - 12th Street, Oakland CA 94607 * 510-465-7728 (W) * 510-835-4913 (fax) * fcs@kmesa.com

Guild Convention to Feature Chief Lawyer for Cuban Workers' Federation

Guillermo Ferriol, the Director of Judicial and Labor Affairs for the Cuban Workers' Federation, and the host of the annual Guild delegations of U.S. labor and employment lawyers to Cuba, has accepted the Guild's invitation to attend and participate in the NLG Convention in Tucson in October.

In a historic development, he will speak on the major panel on globalization, which includes Thea Lee of the AFL-CIO International Department.

In addition, the Labor and Employment Committee will co-sponsor the following panel with the Cuba Subcommittee:

Survival of Socialism in Cuba: the role of the labor unions

While neo-liberalism and the ravages of globalization are being forced on both the developing and the developed worlds, all but eliminating the rights of unions and workers, Cuba resists surrendering and continues its dedication to develop a sustainable socialist model. The decentralization of the economy and the introduction of foreign investment present new challenges to the Cuban unions which are called upon to play a decisive and assertive role. This panel will explore the situation of labor rights and labor relations in contemporary Cuba. Panelists will also report on lessons for U.S. trade unionists and workers' advocates from past and future labor exchanges between the NLG and Cuba. In addition, the panel will provide updated information on the Bush administration's interference with the rights of US citizens to travel to Cuba and the "Wall of Lawyers" defense network organized by the NLG Cuba Subcommittee in response.

Panelists:

Guillermo Ferriol is a labor lawyer and head of the Department of Judicial and Labor Affairs of the Cuban Workers' Federation (CTC). He is also vice-president of the Labor Law Society of the National Union of Cuban Jurists. He has written and published many articles on labor law and has delivered papers at many Cuban and international conferences. He has graciously hosted each of the NLG labor delegations to Cuba.

Debra Evenson, past president of the NLG, has spent the last year in Cuba researching labor rights. Her report ***Worker Rights and Labor Relations in Cuba*** was just published by the Guild Sugar Law Center and will be available at the Convention. A revised edition of her book ***Revolution in the Balance: Law and Society in Contemporary Cuba*** is due out this fall by Ocean Press.

Art Heitzer, the Chair of the NLG Cuba subcommittee, has spearheaded the joint efforts of the NLG and the Center for Constitutional Rights to build a ***Wall of Lawyers*** to defend U.S. citizens caught in Bush's crackdown on travel to Cuba.

Dean Hubbard is a New York City labor lawyer who organizes the annual NLG delegations of U.S. labor and employment lawyers to Cuba.

Cuba Si, Bloqueo No!

Message of solidarity and sympathy to the members of the National Lawyers Guild Labor and Employment Committee, received on September 12, 2001, from Guillermo Ferriol Molina, Director of Judicial and Labor Affairs of the Cuban Workers' Federation:

We have received here with great indignation the facts that took place in New York. Anyone who is responsible deserves our total condemnation, because the death of innocent persons does not have any justification, nor does any act of this nature. What criminals.

I hope that you all and your families and friends are well.

Upon learning the news we think also of all of you, who are already as part of the family.

Fraternally,

Guillermo Ferriol Molina

NLG Labor & Employment Committee Sponsors 3rd Annual U.S.-Cuba Labor & Employment Lawyers Research Exchange

As forces on the right exploit the horrible loss of life caused by September's terror attack, seeking to reorient our nation's global policies in an ever more bellicose direction, the work of the Guild to build international solidarity with the targets of U.S. power becomes even more important. This year's labor delegation to Cuba will play a critical part in this effort, continuing to forge dialogue and lasting relationships between U.S. and Cuban labor and employment lawyers and trade unionists. The report of the 2001 NLG delegation on labor rights in Cuba (available on-line at http://www.nlg.org/committees/ report _ of _ the _ united _ states _ dele.htm) resulted in over 100 labor leaders and lawyers signing a letter to AFL-CIO President Sweeney calling on the U.S. labor movement to end its support for the embargo against Cuba. The 2000 NLG delegation, which met with Fidel Castro and the family of Elián Gonzalez, has been credited by the CTC with playing an important role in winning the eventual release of Elián Gonzalez from captivity in Miami.

Will this year's delegation play a similarly important role on the international stage? It's impossible to say. What is clear is that, as forces on the right seek to deepen the freeze in relations between the U.S. and Cuba, progressive labor and employment lawyers can make a significant impact for a more just and peaceful world simply by traveling to Cuba.

JOIN US!

For more information, and to pre-register, e-mail Dean Hubbard at dean@eisner-hubbard.com.

Havana, Sancti Spiritus, Cienfuegos and Matanzas, Cuba
Tentative Dates: February 15 - 25, 2002

Meet with Cuban Workers!
Engage in Direct, Informal Exchange
with Cuban Labor Lawyers and Trade Unionists!

Check out last year's delegation report on NLG web site: www.nlg.org

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U.S. Union Activists Build Ties with Cuban Labor

by Dean Hubbard

Since the end of the Cold War, progressive U.S. trade unionists have quietly developed improved communication and important ties with the Cuban labor movement. These efforts took off following the election of new leadership of the AFL-CIO in 1995, accelerated during the successful struggle to reunite little Elián Gonzalez with his father (a rank and file Cuban trade union activist) in Cuba last year, and have hit warp speed this year in the struggle against Supreme Court appointee George W. Bush's anti-labor "Free Trade Area of the Americas" (FTAA). U.S. trade union activists working with the National Lawyers Guild and the U.S. Health Care Trade Union Committee are playing leading roles in this growing movement.

Cuba's Labor Movement and the U.S. Embargo

Cuba's nineteen sectorial trade unions are united in a 60 year old national federation which predates the Cuban revolution, called the Central de Trabajadores de Cuba or CTC (loosely translated, the Cuban Workers' Federation). Ever since Cuba's 1959 revolution drove the dictator Batista and his mob cronies from power, Cuba's labor movement has played a central role in the development of that island nation.

While the CTC has worked to build a nation, our government has poured untold hundreds of millions of dollars into destroying it. These efforts have ranged from the covert (assassination attempts, terrorist bombings, even outright invasion) to the overt tangle of laws which are referred to in the U.S. as an "embargo," and in Cuba, perhaps more accurately, as a blockade.

Whether embargo or blockade, none dispute that the purpose of these enactments is to strangle the Cuban economy. And no one who has visited Cuba can forget that an abstract term like "economy" means real harm to real working people and their children. Yet despite this 42 year stranglehold by the strongest nation in the world, Cuban workers, through their labor movement, have been key players in building a system of universal health care, education and worker participation unmatched by any developing nation, if not in the entire world.

The Changing Role of the AFL-CIO

During the Cold War years the AFL-CIO was, sadly, an active partner with our government in its efforts to destroy Cuban independence. One doesn't have to be a supporter of the Cuban revolution to recognize that the time has long since passed when there was any justification for this policy by our labor movement. While the AFL-CIO still officially supports the outdated embargo (with exceptions for food and medicine), since the advent of the Sweeney administration there are strong currents within the mainstream of the AFL-CIO which recognize that the U.S. labor movement has a direct stake in the continued strength and vitality of the Cuban labor movement, if we are to avoid seeing that island nation become yet another haven for the destruction of union jobs. Consequently, under John Sweeney, the AFL-CIO has quietly stopped participating in the most repugnant anti-labor activities carried out by our government in Cuba.

What's more, since the change in AFL-CIO administrations and the Elián saga, many national, regional and local union organizations, such as the San Francisco Bay Area Central Labor Council, have taken strong stands urging the AFL-CIO to end its policy of support for the embargo. Even the Labor Council on Latin American Advancement ("LCLAA"), the AFL-CIO Latino workers' organization, historically conservative on Cuba, passed a resolution last year criticizing the embargo.

National Lawyers Guild and U.S. Health Care Trade Union Committee Lead Efforts to Repair Relations with Cuban Labor Movement, build joint efforts against FTAA

Nevertheless, because the AFL-CIO still officially endorses the embargo, much of the recent upsurge in dialogue and communication with the Cuban labor movement has come about via the efforts of union activists working through three progressive organizations with close ties to the U.S. labor movement: the National Lawyers Guild Labor and Employment Committee, the US Health Care Trade Union Committee (which organizes trade union exchanges and material aid to Cuba and other Latin American and Caribbean countries), and US/Cuba Labor Exchange. The NLG and the Health Care Trade Union Committee have worked together particularly closely, organizing delegations of U.S. trade unionists and labor lawyers to Cuba, where they have met with their Cuban counterparts, visited Cuban workplaces, and engaged in open and honest dialogue about our countries' respective labor relations systems. The report of the 2001 NLG delegation (available on-line at http: // www. nlg. org/ committees/report _ of_ the_ united_ states_ dele.htm) resulted in over 100 labor leaders and lawyers signing a letter to President Sweeney calling on the AFL-CIO to end its support for the blockade. The 2000 NLG delegation played a key role in winning the eventual release of Elián Gonzalez from captivity in Miami.

The result of these efforts has been not only greater understanding, but strong and lasting cross-border relationships with the potential to strengthen both countries' labor movements and benefit the workers of the whole world. For example, the Cuban labor movement, like our own, has taken a leading role in opposing the FTAA, an attempt by transnational corporations to derail workers' rights and democracy throughout the Americas. However, unlike the labor movements in every other country in North, Central and South America and the Caribbean, the CTC has succeeded in persuading the Cuban government to join its opposition to the FTAA. Not only did the CTC, with the full support of the government, pass a strong resolution opposing the FTAA at their 18th Congress, which took place in Havana in May of this year, they are taking the lead in organizing inter-American trade union opposition to the FTAA, beginning with a conference in Venezuela which took place this July, and a second conference to be held in Cuba in November, 2001. Coordination between the CTC and the U.S. labor movement could be the key to building successful opposition to the FTAA.

Bush Administration Denies Visas to CTC Delegation

US/Cuba Labor Exchange, which has also organized delegations to Cuba for trade unionists for several years, invited a delegation of Cuban trade union leaders for a 30 city U.S. tour this past summer. On July 12, in an outrageous last minute move, the Bush administration, after initially signaling they would approve the Cuban delegations' visa applications, reversed course and blocked the visas the very day the CTC delegation was scheduled to leave Cuba.

CTC Delegation to Visit U.S. in 2002

Undeterred, the NLG and the US Health Care Trade Union Committee have convened a group of 14 key U.S. labor organizations which has invited a high level Cuban trade union delegation, led by CTC General Secretary Pedro Ross Leal, to visit the United States next year. The CTC has accepted this invitation. It is clear that a coordinated national effort will be needed to build the political

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U.S. Union Activists Build Ties with Cuban Labor

pressure to force the Bush administration to honor our constitutional right to engage in a free exchange of ideas and information with our Cuban counterparts in our own country. Thus, the sponsors have begun organizing union host committees in cities throughout the country. Initial inviters include Dennis Rivera, President of 1199 SEIU; Henry Nicholas, President of 1199 AFSCME; Richard Metcalf, Secretary-Treasurer of UNITE's Midwest Joint Board; John Hovis, General President of the UE; Walter Johnson, Secretary-Treasurer of the San Francisco Central Labor Council; Gabriel Camacho, the President of the Mass. Chapter of LCLAA; and several other important labor leaders nationwide.

What Can I Do?

Travel to Cuba! Trade unionists and labor lawyers will have a chance to fulfill their curiosity about life for Cuban workers and fight the FTAA by joining in the next Health Care Trade Union Committee delegation to Cuba for a hemispheric meeting this November. Contact Luis Matos at mluis55@aol.com or José Matta at jmatta@1199etjsp.org for more information.

Labor and employment lawyers are invited to join the next NLG labor delegation to Cuba from February 15-25, 2002. Contact dean@eisner-hubbard.com for details on this trip.

Join a host committee for the 2002 CTC Delegation to the US! Contact Juis Matos, Jose Matta or Dean Hubbard (see above).

To support legislative efforts to undo the embargo, contact Mavis Anderson of the Latin American Working Group, manderson@lawg.org.

Finally (and perhaps most importantly), it is critical that you **express your view** to your local union, CLC, regional and state federation leadership that the AFL-CIO policy supporting the embargo against Cuba has succeeded only in hurting workers in both countries. It can, must and will be changed!

***Dean Hubbard** is a union-side labor lawyer in New York City and a leader in the efforts of the National Lawyers Guild Labor and Employment Committee to strengthen ties and normalize relations between the U.S. and Cuban labor movements.*

Struggle for Safety Continues

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door, evidence that should have been removed and preserved six months before. We returned to an emotional memorial that ended with a children's chorus performing *Tomorrow* from the Broadway show *Annie*. Many times I had heard that song on my daughter's record player; now it assumed a moving and unexpected new meaning for me and the hundreds gathered that day to fight for a better future. Ten years later, how much closer have we come?

A Decade of Death

Every year over 5,000 workers are killed on the job. This figure has remained essentially unchanged, on the average, in the decade since Hamlet. Of those fifty thousand workplace deaths, only a fraction have resulted in criminal convictions and an even smaller number in homicide convictions. The legal basis for bringing state criminal prosecutions was firmly established by a series of high profile cases, most notably the 1985 prosecution of Film Recovery Systems, Inc. by the Cook County (Illinois) State's Attorney and the U.S. Supreme Court decision to let stand the decision of the Illinois Supreme Court in ***People v. Chicago Magnet Wire Corp.***, 126 Ill. 2d 356. Taken together, these cases stand for the proposition that Federal OSHA, which permits criminal prosecutions and prescribes relatively light sentences, does not preempt states from charging employers for workplace deaths under state homicide statutes. **Unfortunately, however, only a handful of such prosecutions have gone forward since Hamlet.**

In 1997 Morton International was charged with manslaughter of a California worker who fell through a 60-ton pile of salt and was buried alive. In the same year in Massachusetts, charges were brought against a scrap metal company and its owner after one worker was pulled into a metal shredder and another was crushed by a loading truck. It can be said that the public is not accustomed to regarding workplace fatalities and accidents as resulting from criminal acts. In part, this public perception accounts for the dearth of such prosecutions. But in fact, when given the chance, juries have shown a willingness to return guilty verdicts and impose harsh punishments on employers who kill and inflict injury on workers. In 1999, for example, a jury in Pocatello, Idaho sentenced Allan Elias, owner of a fertilizer manufacturing company, to seventeen years in prison and $6 million in restitution to the family of a man who suffered permanent brain damage as a result of being ordered into a tank full of cyanide with no personal protective equipment whatsoever. While the charges in that case involved violation of state environmental laws, the verdict shows that ordinary citizens are ready to convict and sentence business owners who disregard the safety of their employees.

Criminal Prosecutions Supported in California

Kyle Hedum is one man who is determined to see more criminal prosecutions for workplace deaths and injuries. Hedum is a career prosecutor who now works under a grant assisting district attorneys in Northern California in workplace prosecutions. Hedum has gone to the scene of such fatal "accidents" to preserve evidence, gather witness statements and prepare these cases for trial. The work is tough, especially in small towns where people's livelihoods often depend on the very companies that are taking lives. On the tenth anniversary of the Hamlet fire, Hedum sees the need to convince the public that these are "real crimes," no less than the unlawful acts of violence we see on the evening news night after night.

Complacency Costs Too Much

Ten years after Hamlet, life on the shop floor is still cheap. Ten years after Hamlet, a man whose utter disregard for human life and thirst for profit sent 25 to their graves is free to walk the streets after less than 4 years behind bars. After the outpouring of indignation that followed the slaughter at Imperial Food Products, the best the state of North Carolina could do was less than three months of prison time per worker, and it is certain that absent the widespread protest, Roe would not have been prosecuted in the first place. These cases are hard to bring and hard to win, but the cost is too high for complacency. Much more needs to be done to publicize the prosecutions that have gone forward and see to it that every district attorney's office in the country maintains and adequately staffs units to undertake such cases.

Systemic Change is Needed - Safety is a Human Right

Finally, and perhaps most importantly, none of us are so naive as to believe that individualized criminal prosecutions of workplace fatalities alone will correct the underlying problem. The slaughter in the workplace must be considered within the context of the negligent manufacture of defective products, the pollution of our skies, land and water, and the complete lack of access to adequate food, housing, and health care suffered by millions of Americans. Basic, systemic change is necessary and inevitable to guarantee human life over maximum profit. But when we insist that employers be held criminally liable for the men and women they kill on-the-job, we help point the way towards that change, towards the *tomorrow* of which the children of Hamlet sang.

***Anthony D. Prince** is an attorney with the firm of Kazan, McClain, Edises, Simon & Abrams of Oakland, California which represents asbestos victims. Before becoming an attorney, Tony spent many years in the trades and as an active trade unionist and served on the Health and Safety Committee of USWA. Local 65 in Chicago, Illinois.*

Sen. Edward Kennedy and Rep. Howard Berman Introduce Bills on Immigration/Legalization for Farmworkers

by Bruce Goldstein, Farmworker Justice Fund, Inc.

The debate over immigration and "guestworkers" in the agricultural sector has taken an important step toward progress for migrant farmworkers. On August 2, 2001, Senator Edward Kennedy introduced S. 1313 and Rep. Howard Berman introduced H.R. 2736, the "H-2A Reform and Agricultural Worker Adjustment Act." These identical bills have the support of the United Farm Workers, AFL-CIO, the Farm Labor Organizing Committee, AFL-CIO, Pineros y Campesinos Unidos del Noroeste (PCUN, in Oregon), and deserve widespread support from everyone who believes that there must be fairness, balance and progress in the treatment of migrant farmworkers. The legislation, if enacted, would:

Permit many hard-working undocumented farmworkers to obtain temporary, and then permanent, immigration status if they meet the past-employment and future-employment requirements,

Revise the H-2A temporary foreign agricultural worker program to answer demands of agricultural employers for less bureaucracy when applying for guestworkers, while protecting vulnerable workers. The bills also would extend to H-2A guestworkers coverage under the principal federal employment law for farmworkers, The Migrant and Seasonal Agricultural Worker Protection Act, and

extend to all farmworkers the right to join and organize labor unions free from retaliation by their employers, a right that other occupations have long held.

Since 1995, legislators with close ties to agricultural employers repeatedly have introduced bills to create a new agricultural guestworker program or substantially revise the H-2A program. These proposals have been unacceptable because they would have transformed the agricultural labor market into vulnerable guestworkers and undocumented workers, rather than legal immigrants and citizens. In addition, the bills would have eliminated or substantially weakened the existing law's modest protections for wages and working conditions at employers that hire guestworkers.

Last year, serious negotiations developed among the National Council of Agricultural Employers (NCAE), the United Farm Workers (UFW), Rep. Howard Berman and other members of Congress, including sponsors of the employer-supported bills. The negotiations resulted in a compromise. The compromise had broad support and almost became law, but then-Majority Leader Trent Lott prevented its passage in the last moments of the 106th Congress at the urging of Sen. Phil Gramm, who strongly opposes granting immigration status to undocumented workers.

In 2001, with the coming of the Bush Administration and the 107th Congress, the agricultural employers withdrew their prior support for the compromise. The growers have significant power in the Congress. Senator Larry Craig of Idaho, a staunch grower advocate, introduced S. 1161, another guestworker- focused bill. Although some of the Craig bill's provisions come from the compromise, key sections have been changed for the worse. Most importantly, the onerous qualification standards would mean that few undocumented farmworkers would be able to obtain immigration status. In addition, Craig's bill lacks labor protections that are in the current H-2A program or were in the compromise. In the House, there is no identical bill pending. However, Rep. Chris Cannon introduced a bill, H.R. 2457, to lower the H-2A guestworker program wage rates and create loopholes from paying even those lower rates.

The Kennedy-Berman legislation includes provisions from last year's compromise, but contains improvements that are politically realistic and reasonable.

To qualify for gaining immigration status, undocumented farmworkers would need to show that they had worked at least 90 work days in U.S. agriculture during a twelve-month period occurring in the last 18 months (that is, in one of the two seasons before the law was passed). Generally, eligibility applies to work in fields, orchards, ranches, greenhouses, and certain other operations performed on farms. The qualified farmworkers would receive "temporary resident alien" status. They would *not* be non-immigrant guest workers. They would be treated as permanent resident aliens for most purposes, and could work in any job, travel abroad, and utilize federally-funded legal services.

Temporary residents would be converted to *permanent* resident alien status -- receive "green cards" -- upon completion of a future-agricultural-work requirement. To earn a green card, they must work in agriculture at least 90 work days per year in each of 3 years, and would have 4 years to do so. If disabled due to work-related injury, or if fired from an agricultural job without just cause, the Department of Justice would credit the worker with the lost days of work toward this requirement. Non-agricultural employment would be permitted, but would not be counted toward the program's work requirement.

Family members. Once the farmworker gains *temporary* resident status, his or her spouse and minor children may not be deported by the INS for lacking immigration status. However, the INS may *not* give work permits to family members unless the family members have some other status that allows them to work. Upon the farmworker's completion of the future-work requirement, the *spouse and minor child* are entitled to *permanent resident status* at the same time as the farmworker. Numerical limits on visas and waiting lists will not apply. The farmworker's children remain "minors" even if they became adults during the program.

The H-2A temporary foreign agricultural worker program would be streamlined to become a "labor attestation" program modeled after the H-1B program, to respond to employers' demands to reduce paperwork, delay and government intrusion. This article does not discuss the details of the H-2A aspects of the program due to space considerations. However, the bill contains labor protections that Senator Craig's legislation would eliminate.

We note an important protection that would be added. Because farmworkers are excluded from the National Labor Relations Act, agricultural employers, recruiters and labor contractors may discriminate against farmworkers for joining or organizing labor unions. These Kennedy-Berman bills would amend the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) 8 U.S.C. § 1800, to grant farmworkers the right to join or organize labor unions free from retaliation, which would be enforceable by the workers or the Department of Labor through the usual AWPA remedies.

We are hopeful that, in the context of the U.S.-Mexico discussions on migration policy, that these bills can be enacted this year.

c/o Kazan McClain et al., 171 - 12th Street, Oakland CA 94607 * 510-465-7728 (W) * 510-835-4913 (fax) * fcs@kmesa.com

Holding U.S. Corporations Accountable in the Global Economy

by Al Meyerhoff

As trade barriers fall and the manufacture of offshore goods targeted for the U.S. market increases, the legal challenges posed by the "new economy" are rather daunting. Whatever its long term benefits, globalization demonstrably comes with serious social and economic costs as companies and, indeed, virtually entire industries move production halfway around the world in search of low wages and reduced or non-existent labor standards. The American labor movement and others have responded by pressing for amendments to trade agreements to include a commitment to improvements in labor and human rights. International organizing efforts also are on the rise, as American unions work with their foreign counterparts to improve wages and labor standards. Many business interests have countered these efforts by championing "free trade" as meaning not only reduced tariffs but also, when doing business with foreign manufacturers, freedom from U.S. legal constraints. That focus raises the $64,000 (or, rather, $1,000,000) question: Do American laws and their underlying principles follow American capital as it travels around the world?

To date, most of this debate has occurred outside the American legal system at the World Trade Organization, in Congress, or in the streets of Seattle or Quebec. Most recently, these issues have been joined in a context of a proposed Western Hemisphere free trade zone. However, this article examines whether, and how, under existing statutory schemes, litigation also may be available to address the adverse impacts of globalization, holding U.S. corporations accountable for violations of U.S. and international law offshore and at least partially redressing the economic consequences at home.

The article is in two parts. In the first, cases are discussed where U.S. and international laws have been invoked to address alleged sweatshop conditions in foreign - owned factories producing goods for the U.S. market. In one such case, ***Doe et al. v. The Gap, et al***., the plaintiffs rely upon the Racketeer Influenced and Corrupt Organizations Act and the Alien Tort Claims Act (also known as the Law of Nations). Initially filed in the Central District of California, the case was brought on behalf of a class of allegedly indentured "guest workers" employed in garment factories on the West Pacific island of Saipan. In another such case, also involving sweatshops, the plaintiff is using California's Unfair Business Practices statute to challenge Nike advertising claims that it's goods are manufactured throughout the world sweatshop free.

In the article's second part, litigation approaches are discussed that seek to remedy the adverse domestic impacts that may occur when companies move U.S. production facilities offshore. In these cases, plaintiffs have utilized well-established principles of securities class action and corporate derivative litigation to address fraud and insider trading allegedly occurring when globalization goes wrong. These cases include 10(b)(5) litigation against such corporate giants as Fruit of the Loom, Guess, and Nike.

Globalization Abroad - THE SAIPAN CASE

Saipan is one of a chain of fourteen islands in the West Pacific that comprise the Commonwealth of the Northern Mariana Islands (CNMI), located 120 miles from Guam. Following World War II, these islands were a trust territory of the United Nations; the United States served as administrator of the trust agreement. In 1975, the people of the CNMI voted to become a U.S. Commonwealth, a legal status like Puerto Rico. However, the Covenant approved by Congress exempted the CNMI both from federal minimum wage laws and the Immigration and Nationalization Act. Thus, Saipan is at the very edge of the global economy.

Within a decade of the Covenant taking effect in 1986, the population of the islands skyrocketed from less than 15,000 to 60,000, the majority of whom were foreign "guest workers" from China, Thailand, Bangladesh, the Philippines and elsewhere. Laboring under one to three year employment contracts, many of the workers are employed in the island's garment industry, generating more than $1 billion in textiles for the American market annually. Because Saipan is part of a U.S. Commonwealth, such goods are often labeled "Made in the USA" and may be sold free from production quota or tariff. Companies securing their production in Saipan rather than China or other foreign countries avoid some $200 million in tariffs each year.

Most of the garment factories in Saipan are foreign-owned but do business with a host of major U.S. retailers. According to a series of federal government reports, for years Saipan's garment industry has been plagued by serious violations of U.S. labor laws and international human rights. In one report issued by the U.S. Department of Interior Office of Insular Affairs ("DOI"), workers recruited in China were found to have been required to sign "shadow" contracts before coming to Saipan restricting such basic freedoms as speech, religion and privacy; some were prohibited from "escaping," joining a union, becoming pregnant – even falling in love. fn 1

Many of Saipans "guests workers" are indentured, required to incur debts of several thousand dollars in "recruitment fees" simply to work in Saipan. They also may be required to work long "volunteer" hours without pay, facing deportation if they complain. As one DOI report put it, "the problems faced by the unemployed legal and illegal populations of foreign contract workers in the CNMI include fraudulent recruitment practices, substandard living conditions, malnutrition, health problems, and unprovoked acts of violence being inflicted upon foreign contract workers that are not being addressed by an ineffective CNMI labor and immigration system…Workers describe a Chinese garment work force compelled to work and live under conditions of employment that were tolerated due to the fear of retaliation, economic and otherwise from their Government."

Based upon these and other alleged violations of human rights, on January 13, 1999, a federal class action was filed in the Central District of California for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), the Anti-Peonage Act, and the Alien Tort Claims Act. Defendants included many of the foreign owned garment factories in Saipan, but also many of the nation's largest and best known clothing retailers and fashion houses, such as The Gap, J.C. Penney, Lane Bryant and Target Stores, Inc. During its initial stages, the litigation primarily involved procedural issues, including challenges to jurisdiction and venue. However, in the coming months, the Court will address pending motions to dismiss as well as to approve settlements reached with 19 retailer defendants who collectively purchase more than $400 million in goods per year in Saipan. Settling retailers include such labels as Ralph Lauren, Calvin Klein, Tommy Hilfiger and Liz Claiborne. The settlements provide for financial relief, the establishment of strict codes of conduct governing working and living standards and independent monitoring to insure compliance. However, the garment factory owners, together with the remaining non-setting retailers, Target, The Gap, Lane Bryant and J.C. Penney, are currently seeking to block settlement approval and implementation. What follows is a brief summary of the legal theories providing the basis for the Saipan litigation.

c/o Kazan McClain et al., 171 - 12th Street, Oakland CA 94607 * 510-465-7728 (W) * 510-835-4913 (fax) * fcs@kmesa.com

The Rico Claims

According to the complaint, by participating in a scheme intended to employ "indentured workers" under what are said to be sweatshop conditions, the various defendants violated RICO. The Act provides that "any person injured in his business or property may sue, and shall recover threefold the damages he sustains and the cost of the suit." (18 U.S.C. Section 1962(c)). To state a claim, plaintiffs must allege (1) unlawful conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity violating specified ***predicate acts***. RICO broadly defines ***enterprise*** to include any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated, in fact, although not a legal entity." (18 U.S.C. Section 1962(4)). Involuntary servitude or indentured labor are among the 'predicate acts' proscribed under RICO. fn 2

"A pattern of racketeering activity" exists when a person commits or aids and abets two or more specified acts that have sufficient continuity and relationship so as to pose a threat of continued criminal activity. The Saipan complaint includes allegations that pursuant to various agreements that were negotiated and executed between the U.S. retailers and Saipan factory owners, the defendants formed a series of association-in-fact enterprises for the purpose of committing numerous acts of racketeering. It further alleges that by recruiting and employing thousands of indentured workers required to pay substantial recruitment fees, waive basic civil rights and then work in sweatshop conditions, the various factories and retailers alike committed and/or aided and abetted violations of federal and statutory law constituting a pattern of racketeering activity, including violating the Anti-Peonage Statue (18 U.S.C. 1581) and the Hobbs Act prohibiting extortion (18 U.S.C.1951).

The Law of Nations

The Alien Tort Claims Act 28 U.S.C. Section 1350 was initially enacted by the new republic in 1789 among other things to deal with acts of piracy and punish "the enemies of all mankind." It confers federal subject-matter jurisdiction for human rights violations when: (1) an alien sues; (2) for a tort; (3) committed in violation of established international law or internationally recognized human rights. The Saipan plaintiffs claimed in their complaint that conditions in the islands' garment industry constituted violations of the Act by abridging certain universally recognized human rights as evidenced in various treaties and other internationally approved documents.

Prohibitions on forced, compulsory or indentured labor are universally embraced by the international community as human rights violations that are of universal concern. Often referred to as ***jus cogens*** norms, they are "accepted and recognized by the international community of states as norms from which no derogation is permitted." Such basic labor rights are recognized and incorporated into internationally-adopted instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, guaranteeing freedom of association and freedom from discrimination. The Declaration and the ICCPR also prohibits all forms of slavery and indentured servitude. The principles announced and agreed upon in these instruments are the core of customary international law of labor and human rights. Bureau of Democracy, Human Rights and Labor, U.S. Department of State, ***Overview to Country Reports on Human Rights Practices for 1997*** *(January 30, 1998*), available in 1997 Human Rights Report: Overview, http// www.state.gov/ www/ global humanrights /1997 hrp report / overview.html.at Section VI Worker Rights. fn 3

For many years, such principles, while laudable, were also effectively unenforceable. Meanwhile, the Alien Tort Claims Act lay dormant. See, e.g., ***Filartiga v. Pena-Irala***, 630 F.2d 876, 887 & n. 21 (2d Cir. 1980) (identifying only two previous cases that had relied upon the Act for jurisdiction). As the result of increasing concern over human rights, in the 1980's the Act began to be used against repressive government regimes. See, e.g., ***Abebe-Jira v. Negewo***, 72 F.3d 844 (11thCir. 1996) (alleging torture, rape, and other abuses orchestrated by Serbian military leader); ***In re Estate of Marcos***, 25 F.3d 1467 (9th Cir. 1994) (alleging torture and other abuses by former President of Philippines); ***Tel-Oren v. Libyan Arab Republic***, 726 F.2d 774 (D.C. Cir. 1984) (alleging claims against Libya based on armed attack upon civilian bus in Israel); ***Filartiga***, 630 F.2d 876 (alleging torture by Paraguayan officials); ***Xuncax v. Gramajo***, 886 F.Supp.162 (D. Mass. 1995) (alleging abuses by Guatemalan military forces).

Now, in a changing economy and an evolving body of law, globalization is now testing whether not only governments, but also U.S. corporations can be held accountable in U.S. courts for violations of human rights, including by their business partners abroad. The law plainly is moving in that direction. Under several recent decisions, private persons may be held liable both for certain acts if undertaken under color of state law as well as in derogation of certain norms of international law. ***Doe v. Unocal Corp***., 963 F. Supp. 880, 890 (C.D. Cal. 1997) (Paez, J.); *see also* ***Kadic v. Karadzic***, 70 F. 3d 232, 238 (2d Cir. 1995); ***Wing v. Royal Dutch Petroleum Co.***, 226 F. 3d 88 (2d Cir. 2000).

The Nike Case

Kasky v. Nike was brought as a "private Attorney General" case in California State Court challenging as allegedly false or deceptive various statements made by Nike that it's products were manufactured throughout the world in compliance with a strict code of conduct and free from sweatshop labor.

Under California's unfair competition law, "unfair competition" includes "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." ***Comm. on Children's Television, Inc v. General Foods Corp.***, 35 Cal. 3d 197 (1983). The Act has been broadly defined. To state a false advertising claim "it is necessary only to show that 'members of the public are likely to be deceived' " ***Id***. at 211 (citation omitted). The Nike complaint identified a host of statements by Nike concerning how the company's products were claimed to have been made that the plaintiff said were false or deceptive. Nevertheless, the case did not initially fare well. Both the trial court and court of appeal dismissed the action on First Amendment grounds. In a novel and rather controversial decision, the appellate court devised a line between "pure" speech and "commercial" speech that turned on whether the statements at issue concerned "specific characteristics of goods" (said to be commercial and subject to reasonable regulation) or instead addressed *how* goods were manufactured that also "were intended to promote a favorable corporate image," (said to be "pure speech") even if such speech was "intended to induce consumers to buy its products." The California Supreme Court has granted review of the case.

Perhaps recognizing the potential ramifications of this case in the global economy, not only in the human rights context but also for the panoply of "green marketing" and other sometimes questionable corporate image advertising, several amici curiae briefs have been submitted – including on behalf of Nike by business interests, conservative legal foundations and the ACLU, and on behalf of the plaintiff by organized labor, environmentalists and the California Attorney General.

Should the plaintiff prevail in Nike and establish that public statements by U.S. companies about the behavior of their foreign business partners – such as often-touted compliance with corporate codes of conduct – are "commercial" speech, then in California at

least, such claims will be judicially reviewable. As Justice Scalia has recognized, "commercial speech [enjoys] a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values," ***Board of Trustees* v. *Fox***, 492U.S. 469, 477 (1989.) [C]ommunications can 'constitute commercial speech notwithstanding the fact that they contain discussions of important public issues…. We have made clear that advertising which 'links a product to a current public debate' is not thereby entitled to the constitutional protection of non-commercial speech." ***Id.*** at 475 (citations omitted).

GLOBALIZATION AT HOME

Americans now buy 100% of their televisions, most of their other electronics and 2/3 of their textiles from foreign sources. When entire segments of the American manufacturing sector move offshore, there are obvious consequences domestically, including for workers, local residents and sometimes for shareholders. For workers who lose jobs, in the past at least some remedies have been available, such as Trade Re-adjustment Act benefits for job losses due to trade imbalances. However, losses to shareholders that occur from problems associated with globalization and the transition to foreign manufacturing have garnered little attention. This may be changing.

When a publicly traded company issues a false and misleading statement to shareholders or fails to disclose facts necessary to insure that statements made are not false and misleading, it violates Section 10(b) of the Securities Exchange Act of 1934. Likewise, corporate insiders who trade on undisclosed information may also be liable to "insider trading," and required to disgorge any illegally obtained profits. In addition, various state laws impose upon corporate directors and officers fiduciary duties of candor, good faith and fair dealing. Violating these duties may result in a waste of corporate assets, authorizing "derivative litigation" brought by shareholders, in the company's name, against corporate officers and directors.

In the past two years, several lawsuits have been brought for violations of these laws in which the central allegations concern the failure to truthfully inform shareholders of problems flowing from foreign manufacturing, including losses in quality and inventory control.

Probably the best example of such litigation is a suit brought by a Service Employees International Union (SEIU) pension fund on behalf of purchasers of Fruit of the Loom stock. Indeed, the Fruit of the Loom experience demonstrates the potential hazards of the global economy when promises are made concerning cost-savings and efficiency from moving domestic manufacturing facilities overseas that prove to be false. This once-great American Fruit of the Loom brand known throughout the world is now bankrupt.

A sound and highly profitable company in the past, Fruit of the Loom stock hit an all time high in 1993 of more than $49 per share. According to the SEIU complaint, a series of unsuccessful acquisitions and inventory problems then resulted in losses of $373 million in 1994 - resulting in a "restructuring" that included three plant closings and 6,000 layoffs. Fruit of the Loom stock plummeted to $16/share. The company assured investors that it was taking appropriate steps to improve efficiency and lower labor costs, including by moving most of its sewing operations to the Caribbean and Mexico. Business seemed to improve. Assurances about inventories and cash flows were rosy and the stock recovered. Suddenly, in 1997, Fruit of the Loom reported rather astonishing losses - over $530 million – which according to the complaint, were due to problems in its new facilities in Mexico and the Caribbean and losses in quality and sales. More U.S. plant closings were announced and 7,500 more workers were fired. In the end, Fruit of the Loom suffered a total of over $715 million in losses, fired 16,385 U.S. workers and closed over 20 U.S. plants. The company stock never recovered, and currently the company's remaining assets are being sold off in bankruptcy auctions.

During the period the stock was inflated, according to the complaint, top Fruit of the Loom executives received over $32 million in cash and stock bonuses. They also allegedly sold 104 million shares - reaping $46 million in profits. Bill Farley – Fruit of the Loom Chairman and CEO – allegedly sold over 1.2 million shares - 96% of the stock he owned, reaping $39 million in profits. Other insiders sold 94% of their stock, much acquired as stock options for the Company's "success."

The SEIU complaint alleged Fruit of the Loom made false representations to shareholders over the economic benefits obtained by moving their operations offshore when the opposite was true. Losses in product quality and inventory were said to have actually led to losses to the company and shareholders. Fruit of the Loom executives as insiders, set themselves up to profit personally, the Complaint alleged, while thousands of workers lost their jobs, communities lost business and shareholders lost millions in stock value. The SEIU's case has survived a motion to dismiss and is proceeding toward trial. fn 4

As this case demonstrates, the Securities Exchange Act offers at least one vehicle to help remedy what are sometimes serious adverse impacts of the rapidly moving global economy. And the use of this approach appears to be on the rise. In the past several months, at least eight securities cases have been filed against GUESS, alleging that the director Marciano Brothers misled investors by making false statements about rising inventories stemming in part from foreign manufacturing problems. Late last year, Paul Marciano was replaced as President of the company. Other companies like Ann Taylor and Nike have also been sued for securities fraud for allegedly withholding from shareholders important information about problems with foreign inventory and quality control from their foreign suppliers.

Conclusion

The response of the American legal system to globalization is obviously at a very early stage. However, the potential is there to utilize existing laws to secure some modicum of justice - both abroad and at home for those caught up in the economic forces of the 21st century, often to their detriment.

Al Meyerhoff, *a partner with Milberg Weiss Bershad Hynes & Lerach LLP, has practiced civil rights and environmental law for 30 years. His email address is alm@mwbhl.com.*

fn 1 Report to Honorable George Miller's Congressional Delegation re CNMI Labor and Human Rights Abuse Status Reports, United States Department of Interior, Office of Insular Affairs, Aug 12, 1998.

fn 2 In its landmark ***United States v. Kominsky*** decision, the Supreme Court has defined "involuntary servitude" broadly, taking into account the specific circumstances of the alleged victim. Thus, a person's "special vulnerability may be relevant in determining whether a particular type or a certain degree of physical or legal coercion is sufficient to hold that person to involuntary servitude". ***Kominsky***, 487 931, U.S. at 948 (1998). Imposing a debt or threatening an immigrant with deportation can constitute the threat or legal coercion that induces involuntary servitude, one of the bases for the Saipan case.

fn 3 Slavery and indentured labor of course persists around the world. See, e.g., Bales, Disposable People: New Slavery in The Global Economy, U.C. Press (1999).

fn 4 Under recent amendments to the nation's securities laws contained in the Private Securities Litigation Reform Act ("PSLRA"), litigation by institutional investors like the SEIU pension fund is favored and they may obtain the "lead" position in bringing such cases. According to the U.S. Department of Labor, in bringing litigation to redress securities fraud, the trustees of pension funds fulfill their fiduciary responsibility to beneficiaries as well by recovering for losses to retirees' savings.

Lawsuit Forces Labor Secretary Chao to Issue 2001 Wage Rates for Ag Guestworkers

by Bruce Goldstein, Farmworker Justice Fund, Inc.

A lawsuit forced Labor Seretary Elaine Chao to issue the annual wage rates under the H-2A temporary foreign agricultural worker (***guestworker***) program for the year 2001. Chao delayed this year's wage rates stating the law allowed her to issue them as late as December 31, 2001. Just before a July 30 preliminary injunction hearing, the Labor Department (DOL) agreed to publish the wage rates by August 2, 2001. Regrettably, the new wage rates, which should have been issued in February or March, only take effect on the date of publication. The underpaid workers have no remedy for their losses.

Attorneys for plaintiffs are three Guild members: David P. Dean and Jeffrey S. Vogt of James & Hoffman, and Bruce Goldstein, Co-Executive Director of Farmworker Justice Fund, all in Washington, DC. The case was filed in federal court in DC on behalf of the United Farm Workers of America, AFL-CIO, based in Keene, California, and the Farm Labor Organizing Committee, AFL-CIO, based in Toledo Ohio. Two individual farmworkers employed under the guestworker program in North Carolina, who were being underpaid, also were plaintiffs. The case is ***UFW v. Chao***.

Approximately 6,300 employers participate in the H-2A program. DOL approved 48,000 jobs for H-2A in FY 2000; the program has been expanding in recent years. We estimate over 40,000 farmworkers will receive a pay increase. The H-2A program is used heavily in tobacco and in eastern apple orchards and nurseries and for harvesting Christmas trees in several states. A large nursery in Oregon, irrigation pipe layers in Idaho, and a major citrus grower in Florida use H-2A workers. In Kentucky, home to Senator McConnell, Secretary Chao's husband, 2,467 H-2A tobacco workers were approved for FY 2000 by DOL plus another 400 in vegetables and other crops. North Carolina uses the most H-2A workers; DOL approved 10,850 H-2A jobs last year including tobacco, cucumbers, sweet potatoes, fruits and Christmas trees. The Farm Labor Organizing Committee is organizing cucumber workers in North Carolina.

The case involves the ***adverse effect wage rate*** (**AEWR**) under the H-2A program. A longstanding regulation requires DOL annually to issue the AEWR. DOL's 2001 wage rates are determined by regional wage surveys paid during the year 2000. AEWR's purpose is to prevent the hiring of temporary foreign workers from ***adversely affecting*** or undercutting US farm labor standards. Employers must pay th highest of the AEWR or the local prevailing wage for that job. (Although many farmworkers are paid a piece-rate wage, the H-2A AEWR serves as the minimum hourly earnings level.)

AEWRs are usually published in February. In June, when the rates still had not been issued, a lawsuit was filed to compel issuance. DOL Asst Secy for Policy Christopher Spear told the Court some members of Congress wrote to Secretary of Labor and "These members of Congress requested that the Department refrain from publishing an AEWR for the current calendar year until Congress has had an opportunity to address the issue. . . ."

But this delay was illegal. The AEWR must be issued every year in enough time for it to be paid to workers during that year.

In addition Secretary Chao ignored several members of Congress who requested an end to the delay including Rep. Major Owens (D-NY), Rep. George Miller (D-Cal), and Rep. Howard Berman (D-Cal). Chao obviously was reacting to the demands of agricultural employers lobbying DOL and Congress to lower the H-2A wage rates.

The next step in the lawsuit is to obtain a court ruling that prevents such delay and harm to farmworkers from recurring.

Whistleblower Victory

Schell v. City of Los Angeles, CV 00-01454 FMC

In June, 2001, attorneys Dan Stormer, Anne Richardson, and Sandra C. Muñoz of Hadsell & Stormer won a $4.3 million dollar verdict against the City of Los Angeles, Chief of Police Bernard Parks, and Commander Dan Watson on behalf of a City employee who refused to perjure herself.

Plaintiff Theresa Schell was a 29 year employee with the City of Los Angeles when she was terminated in December, 2000. She had been a key witness in a previous lawsuit, Kimpel v. City of Los Angeles, which was a class action involving the payment of overtime to police officers. Ms. Schell testified in her deposition that it was possible for the City's computer system to pay overtime in a timely fashion. According to the Kimpel plaintiffs' attorneys, Ms. Schell was the key turning point in the lawsuit, and employees for the City said that her testimony would "blow the City's case." A week before trial, plaintiff met with the City's private attorney who asked her if she would be open to changing her testimony. Plaintiff refused. The next day, a co-worker called her a traitor. Within weeks, Commander Watson presented her with an "agreement" to either transfer or retire and to release any legal claims she might have against the City. Plaintiff refused. She was then immediately transferred involuntarily to a new assignment where she had no work to do, but spent months reading computer manuals and working on clerical assignments.

On February 10, 2000, plaintiff was notified that she was being sent home on inactive duty assignment pending an investigation into alleged misconduct. When she was summoned for an interview, she was told that she was accused of improperly accessing a confidential document. The allegations of misconduct were trumped-up, in that the supposedly confidential document she accessed was on the public drive that everyone in her department had access to. She was read her Miranda rights and told that she could be charged with a felony based on the conduct. An investigation ensued, which ultimately recommended that she be terminated. On December 20, 2000, she was terminated, after 29 years with the City, and no record of any prior discipline.

After plaintiff was fired, she lost her entire $79,000 income, and was concerned about her job prospects with the criminal allegations on her record. Plaintiff used up her savings to pay the mortgage on the house she lived in with her mother, and then when that ran out, she was forced to withdraw the employee contributions for her pension. That left her with no pension, after 29 years of unblemished service to the City. Plaintiff also suffered severe emotional distress throughout the events above, and particularly upon being terminated.

Plaintiff had claims under 42 U.S.C. §1983, the Fair Labor Standards Act, the Fair Employment and Housing Act, wrongful termination in violation of public policy, and intentional infliction of emotional distress. The verdict was $3,611,000 in combined economic and emotional distress against all defendants; $500,000 in punitive damages against Chief Parks; and $250,000 in punitive damages against Commander Watson. The case subsequently settled for $3,750,000.

Congratulations to Dan Stormer, Anne Richardson, and Sandra C. Muñoz of Hadsell & Stormer

c/o Kazan McClain et al., 171 - 12th Street, Oakland CA 94607 * 510-465-7728 (W) * 510-835-4913 (fax) * fcs@kmesa.com

Bay Area NLG L&EC To Support Asian Immigrant Women Advocates

by Nan Lashuay

Asian Immigrant Women Advocates (AIWA) has a long and strong history of successful community-based organizing. We have been meeting with the NLG Labor & Employment Committee over the last year to solidify the work we can do together and are excited about this collaboration.

California is the center of garment production in the United States. Statewide, there are roughly 160,000 workers in 5500 mostly small garment factories (75% have under 20 workers). The industry is notorious for its low wages, lack of benefits, harsh working conditions and resistance to unionization. A 1997 report by California's Targeted Industries Partnership Program found that 43% of the factories visited had minimum wage violations, 55% had overtime violations, 96% had OSHA health or safety violations, including 72% who were in serious violations of OSHA standards.

In Los Angeles, where most of the factories are located, the workers are predominately Latina, female, and undocumented. In the Bay area, there are about 12,000 garment workers. Most are Chinese immigrant women. They work in boarded-up store fronts and upstairs lofts in Chinatown and various low-rent industrial neighborhoods in San Francisco and Oakland. Throughout the industry, high speed repetitive work, long hours at minimum wage, inadequate breaks, crowded conditions, fabric dust, fire and other safety hazards are common. Most sit on metal folding chairs, kitchen chairs, benches or crates. Musculoskeletal disorders are common.

Retailers and manufacturers control the industry. They contract out production both domestically and overseas. The price competition is brutal and many small factory owners are barely surviving. Meanwhile, the retailers and manufacturers, whose pricing policies create the sweatshop conditions, argue that they have no responsibility for what goes on in their contractors' shops.

AIWA's Garment Worker Projects

AIWA has been doing organizing with immigrant women (primarily garment workers and electronic assemblers) since 1982. AIWA's principal focus is empowering immigrant women to speak up for themselves and to take leadership roles in their own struggles. Our Garment Workers Justice Campaign in the mid-1990s successfully targeted a major manufacturer in the Bay Area over subcontractor wage violation issues and garnered national attention to the problem of garment workers.

About three years ago, AIWA members decided they wanted to work on health and safety problems in their factories. Since then AIWA has partnered with the University of California at San Francisco to open a free occupational health clinic for garment workers in Oakland's Chinatown. We are also partnering with UCSF and the California Department of Health Services to design and test low cost ergonomic improvements that could be easily implemented in small factories.

Garment Workers Ergonomics Campaign

AIWA is about to test our workstation improvements in three "model" factories we recruited into the project. If successful, we should have a package of simple changes that would cost $200-250 per worker or workstation to implement. We want to do a campaign, probably starting early next year, to get all the factories to adopt these improvements.

AIWA has a committee of about 20 women involved in this effort and is still in the process of developing the campaign. The first steps will include outreach to workers and, ideally, worker-initiated meetings with factory owners. After that, a variety of different collective tactics are being considered.

Low Wage Workers' Clinic for Oakland

The current workers compensation and occupational health care system doesn't work for garment workers and many other low-wage immigrant workers. AIWA's second campaign is to demand healthy workplaces for immigrant workers in our community. We are currently trying to get funding to expand our clinic to other low wage workers in Oakland and to model an activist-oriented community prevention program that could be adopted in urban areas around the country. We see the clinic as providing support and consultation to unions and community groups on health and safety issues, promoting practical research/workplace improvement campaigns (similar to those we are doing with the garment ergonomics project), and basically being a force for change for improving the health and safety conditions of low wage/immigrant workers.

Support Needed

We want to continue to work with the Bay Area NLG L&EC to develop a support group around these issues. The L&EC can assist AIWA to develop broader community support for the needs, priorities, and strategies AIWA identifies.

The NLG L&EC can help facilitate union support and input for the low wage worker clinic. To date, HERE 2850 has committed to supporting AIWA. At the last L&EC meeting, the Building & Construction Trades of Alameda County promised to develop support as well.

The L&EC can also help support AIWA's fund raising and grant writing for the clinic and the garment worker campaign.

One significant issue for the garment workers health and safety campaign is finding money so that the small factory owners may implement the needed (and inexpensive) changes. Factory owners continue to say they don't have the money to do this (and in many cases that is probably true.) So AIWA will look at a variety of ways to fund the worker protection. San Francisco may have a business tax fund that can be used for workplace equipment upgrades. Washington State has a workers compensation program that provides grants of up to $2500 per workstation to make ergonomic improvements in small businesses. Perhaps new local or state legislation could be useful. The manufacturers and retailers may also be targeted to fund necessary improvements. The NLG L&EC can assist AIWA in this approach.

As the campaign develops, AIWA will work with support groups to help implement our program. NLG L&EC members can be part of delegations to workplaces, build community support with letters to the editor and other similar liaison work, provide legal support for pickets and demonstrators, help with other media work, etc.

If you are interested in more information, contact Fran Schreiberg at fcs@kmesa.com or call 510-302-1071

Convention Events of Interest to L&EC Members

apologies for conflicts - we had no control over scheduling

Thu	Oct 11		**TENTATIVE - NLG L&EC STEERING COMMITTEE meeting -** check L&EC literature table for more information
Thu	Oct 11	6:00 pm	WELCOME Reception
Fri	Oct 12	8:30 - 10:00	**Major Panel: Fighting on the Fronlines of the Living Wage Struggle: Strategic Use of Law for a People's Movement**
Fri	Oct 12	10:15 - 11:45	**Workshop: Survival of Socialism in Cuba: the Role of the Labor Unions** featuring **Guillermo Ferriol**, labor lawyer and head of the Department of Judicial and Labor Affairs of the Cuban Workers' Federation (CTC) *sponsored jointly by the Cuba Subcommittee and the NLG L&EC*
Fri	Oct 12	2:00 - 3:30	**Workshop: New Economy's Disposable Workforce** *sponsored by the NLG Sugar Law Center*
Fri	Oct 12	3:45 - 5:15	Workshop: Campaign Finance as a Civil Rights Issue
Sat	Oct 13	8:45 - 10:15	Workshop: Environmental Justice Advocacy After Sandoval *sponsored by the NLG Sugar Law Center*
Sat	Oct 13	10:30 -12:00	**Major Panel: The Debate on Labor and Environmental Standards: Transforming Globalization to Protect Development and Human Rights** featuring **Guillermo Ferriol**, labor lawyer and head of the Department of Judicial and Labor Affairs of the Cuban Workers' Federation (CTC)
Sat	Oct 13	12:00 - 1:45	**NLG Labor & Employment Committee LUNCH MEETING** check L&EC literature table for more information
Sat	Oct 13	1:45 - 3:15	Workshop: Employment Rights and INS Workplace Enforcement *sponsored by the National Immigration Project*
Sat	Oct 13	1:45 - 3:15	Workshop: Transgender Law: Employment Issues and TG's in the Criminal Justice System
Sat	Oct 13	3:15 - 4:45	**PLENARY: Current situation**
Sat	Oct 13	5:30 - 7:00	**NLG L&EC and Sugar Law Center - Cocktails with Guillermo Ferriol** check L&EC literature table for more information
Sat eve	Oct 13	7:30 - 10:00	Banquet honoring Eurofresh agricultural workers

WORKSHOPS listed are only those with labor or employment orientation or which may be of interest to our members - this is NOT a complete list

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