



Support Our Troops by Bringing Them Home Now! Urge a UN Negotiated Cease Fire

Editor's Note: The difficulty with a newsletter is timing. No one can predict what may occur in Iraq between writing and publication, but undoubtedly our troops will still be there as combatants or in post-war efforts. The NLG Labor & Employment Committee has not issued its own statement, thus this article simply compiles a variety of statements upon which we may reflect.

We cannot support this war, but we can and do support our troops anywhere in the world when they are in harm's way. We hope these young men and women will be safe, and that loss of life on both sides will be minimized. We urge a United Nations negotiated cease fire and peace proposal, and that any peace keeping efforts be shared by all nations under the UN banner. We believe that in this way, our sons and daughters will return home to their families safely and quickly.

A View from the State Building & Construction Trades Council of California

by Bob Balgenorth, President

Editor's Note: This article is excerpted from the April, 2003, President's column on the SBCTC website at www.sbctc.org

"... But wars have a strange habit of getting out of hand. Dwight Eisenhower, one of America's great generals, once said that all the planning and scenarios the Pentagon could put together meant nothing when the first shot was fired. From that moment on, he said, everything goes straight to Hell. Wars are like that.

"Recently, many of the Democratic hopefuls for President assembled ... at the California Democratic State Convention. Although many spoke of social and union issues, it was all against the looming backdrop of Iraq. Most ... dodged the question of the war. Some like Howard Dean came out directly against armed intervention in Iraq. Senator John Kerry, however, may have had the most thoughtful answer Himself a combat veteran, he knows first hand what war is like. Kerry said, 'We should only go to war because we have to, not because we want to.'

"History will finally judge whether this was a war of need or a war of political convenience.

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A View from US Labor Against the War

by Amy Newell, Organizer

Now that the war has begun, USLAW is seeking ideas for how to continue to build opposition to this illegal and immoral war under changed circumstances. We seek to define *supporting the troops* in a way that does not include blind adherence to whatever misguided foreign policy the Bush administration asserts, and to connect Bush's war on Iraq with his war against working people here at home. We plan to participate in the national debate about the policies that brought about this war, preventing future *preemptive* wars, and taking on the increasingly serious issue of guns versus butter. We welcome any support and input that readers of this newsletter have to offer.

A groundswell of anti-war sentiment within organized labor began building last fall in response to the Bush's belligerent and war-like pronouncements against Iraq. It started with local unions, central labor councils, and some regional and national labor bodies adopting resolutions opposing a war. In mid-December, two labor veterans, **Gene Bruskin**, Secretary-Treasurer of the Food & Allied Service Trades Department of the AFL-CIO, and **Bob Muehlenkamp**, former Director of Organizing for 1199 and the Teamsters Union and now an independent labor consultant, took the initiative to convene a national meeting of labor against the war.

On January 11, 2003, we met in Chicago at Teamsters 705, the second-largest Teamsters local in the country. Over 100 union leaders and activists representing a broad cross-section of the labor movement and 70 different labor organizations attended. Attendees came to the founding meeting of USLAW to give a national profile to the anti-war movement within labor, to enable us to speak with one voice, and to provide a means of establishing relations with peace-loving trade unionists around the world.

Since that founding meeting, we have made great strides. Many more labor organizations at all levels came out against the war on Iraq. At this writing, more than 200 local unions, 50 central labor councils, dozens of regional labor bodies and six national unions adopted resolutions opposing the war on Iraq. The national labor bodies include AFSCME, APWU, CWA, UNITE, UE, UFW as well as the Coalition of Labor Union Women and Pride at Work (national constituency groups

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State Building & Construction Trades Council of California and Alameda County Building Trades

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“Today, we can assess the real costs of Bush’s foreign policy [as] the events ... unfold. [W]orking men and women in this nation ... can examine the motives that drive this President and inquire as to whether this was truly necessary.

....

“Bush’s obsession with Iraq turned out to be stronger than any of us could have imagined. In the 1980s, we backed Iraq in their war against Iran. One of our gifts to them was the expertise and ability to build and use biological weapons [and] deadly gasses. Unfortunately, we taught them too well.

“In the months ahead, it is critical to remember that this administration has the worst anti-union, anti-working family agenda of any President in this century. In the smoke and fire of Iraq, Bush will seek to push a domestic agenda that is truly dangerous for Americans who earn a paycheck and struggle to feed their families.

“As the next presidential election looms on the horizon, Bush will do everything he can to divert our attention from his agenda for the rich. We now know that we can never underestimate what he will do to have his way. He doesn’t need any authority to do what he wants . . . because he has “the will.” [Bush stated, ‘This is not a question of authority . . . it’s a question of will.’] In Texas jargon, that means shoot first and ask questions later. We think it’s time to ask hard questions now. God willing, few Americans and innocent people will die because of Bush’s galloping wish for the war. We can’t do much about that.

“We can do a lot about rebuilding our economy and protecting our jobs and hard-fought rights. Our focus must be clear and just as resolute as Bush’s desire to destroy unions and return workers to the days of unfettered big business and “Robber Barons.”

“Our war is also at home. The next election is our battleground. Together, unions and the Democratic party are formidable. We almost got the job done in 2000 and 2002. In 2004, we have no choice.”

A View From the Alameda County Building & Construction Trades Council on the Bush Administration’s Drive for War

by Barry Luboviski, Executive Secy-Treasurer

Mid-February, I was doing what we do in our country when we are not satisfied with our elected representatives: I was in a demonstration. This was not the usual picket line or demo, this was big. Two hundred and fifty thousand people were voicing their concerns about this President’s race to war. These were not the usual participants in a Peace Rally. There was nothing narrow about the participation. Everyone was there in significant numbers.

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In 1996, Building Trades workers marched twenty thousand strong in Sacramento and thirty thousand in Los Angeles to let then Governor Wilson and the Legislature know, we were not going to let Prevailing Wage go without a fight. Building trades workers are not afraid to voice their opinion.

Bush may be the President, but he sure doesn’t represent the interests of working people in this country. His agenda clearly represents the Enrons of the country. I don’t believe this President is a dummy with no ideas. He very definitely has an agenda. By pursuing war unilaterally, he not only diverts attention from the economy, but sets up the means to dismantle safety nets built during Roosevelt’s New Deal by eliminating funds for them.

The cost of this war will be incredible. Without Federal funds, our schools, our health care, and most notably our social security are at risk. With Social Security gone and with the safety net dismantled, working people and our Unions become that much more vulnerable. I think it makes a lot of sense, if your agenda is to add wealth to your big business allies and destroy Organized Labor’s ability to protest.

So I hope I’ll see you at the next demonstration or picket line. It may be to bring our troops home or it may be in defense of our basic rights. Those 250,000 people, including many Trade Unionists with whom I marched, understood who orchestrated this war and why we need to speak out now.

I’ll see you on the Picket Line.

Alameda BTC Resolution

WHEREAS, this Council supports the Resolution On Iraq recently passed by the National AFL-CIO Executive Council and stands with the AFL-CIO in its support for all working men and women in our armed forces and honors their courage, realizing that those who fight for the United States are, as they always have been, the men and women of America’s working families; and

WHEREAS, this Council further supports the position stated by the National AFL-CIO that, “America’s working families and their unions fully support the efforts to disarm the dictatorial regime of Saddam Hussein. This is best achieved in concert with a broad international coalition of allies and with the sanction of the United Nations.” And realizing that a preemptive war on Iraq does not have the support of the United Nations or the international community, and undermines our nation’s credibility with our allies in the war on terrorism; and

WHEREAS, we believe that our country and our families will be more secure if America is the respected leader of a broad coalition against terrorism, rather than isolated as a lone enforcer and we heed the words of Democratic Senator Robert Byrd, who stated before the Senate, “This Administration has split traditional alliances, possibly crippling, for all time, International order-keeping entities like the United Nations and NATO. This Administration has called into question the traditional worldwide perception of the United States as well-intentioned, peacekeeper;” and

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WHEREAS, the Bush Administration under the pretext of war has spearheaded an assault on Organized Labor and has worked to deny the rights of union representation for 170,000 employees in the Department of Homeland Security and proposes to privatize at least 850,000 federal jobs, although our security depends on the daily hard work and commitment of all of these government workers; and

WHEREAS, in defense of this blatant attack on Labor, the Bush administration claims that maintaining workers' fundamental rights to union representation is incompatible with the war against terror. The administration's stance insults every union member on the front lines of the battle for domestic security: fire fighters and rescue workers sacrificing their own lives to save the lives of others; nurses tending to the victims of terrorist attacks; construction workers toiling around the clock to clean up Ground Zero; and

WHEREAS, under Bush's leadership in a scant two years, this Administration has squandered a large projected surplus of some \$5.6 trillion over the next decade and taken our country to projected deficits, a sinking economy, blatant and still unchecked corporate corruption at the same time proposing tax cuts for the most wealthy of our nation, while many wonder about their ability to retire and whether Social Security will, in fact be secure; and

WHEREAS, the billions of dollars to be spent on a war with Iraq will dramatically take away from the massive funds needed at home to help our cities and states through the current fiscal crisis, strengthen our educational system, meet the health care needs of all Americans including 41 million people without coverage, build housing, rebuild our national infrastructure and bolster Social Security rather than destroy it; and

WHEREAS, the Bush Administration and appointments made by that administration bring forth policies and decisions that undermine the National Labor Relations Act, attack California certified Apprenticeship Programs and propose their removal from Federal projects, bring forth a Presidential Executive Order outlawing Project Labor Agreements on Federal projects, propose elimination of overtime pay and witness a Republican dominated Congress that is considering proposals that will undermine the strength of our Taft Hartley Pension Plans in favor of defined contribution plans (401K, IRA), knowing full well that 401K's and I.R.A.'s are far more vulnerable to the market and do not have the guarantees contained within our Union pension plans that pay a consistent monthly amount to our elderly pensioners, regardless of market fluctuations.

THEREFORE BE IT RESOLVED, that the Alameda County Building and Construction Trades Council, AFL-CIO, stands firmly against the Bush Administration's drive to war and calls for a re-ordering of our national priorities which must include creating jobs, rebuilding our national infrastructure and stopping the blatant attacks on Labor Union men and women; and

THEREFORE BE IT FINALLY RESOLVED, that the Alameda County Building and Construction Trades Council, AFL-CIO, joins other labor organizations and community allies in actively promoting and participating in activities opposing the Bush Administration's drive to war.

US Labor Against the War

of the AFL-CIO). The national Executive Board of SEIU, the largest union in the nation, sent a letter to Bush critiquing his war policy. On February 27, 2003, the AFL-CIO Executive Council adopted a resolution that said, in part, "The President has not fulfilled his responsibility to make a compelling and coherent explanation to the American people and the world about the need for military action against Iraq at this time." Such widespread opposition within organized labor on an issue of U.S. foreign policy is unprecedented.

USLAW has established a web site with vital information. See www.ulaboragainstar.org. The site links and inspires labor activists working against the war in their separate communities. The site contains a partial list of labor bodies that have official opposed the war on Iraq, includes the resolution that established USLAW, educational materials and links to other anti-war sites. To contact USLAW in your community, send an inquiry to info@uslaboragainstar.org.

USLAW organized with labor around the globe for an International Labor Declaration Against the War on Iraq. Labor unions, federations and individual leaders representing more than 130 millions workers in 53 countries endorsed this USLAW-initiated declaration, and on February 19, USLAW hosted an international phone call / press conference to announce this historic development. Participants included: the President of the Australian Council of Unions, the Executive Director of the CUT federation of Brazil, the President of the All-Pakistan Trade Union Federation, the General Secretary of the Confederation of Arab Trade Unions, the President of CUPE - the largest union in Canada, the co-President of the UNT Federation of Mexico, the General Secretary of the Education & Culture Dept. of the FO Labor Federation of France, the Director of the International Dept. of the CGIL FP of Italy and others. Although the mainstream U.S. news media ignored this event, it received substantial international news coverage. A recording of the phone call is available on the USLAW web site.

USLAW next organized and hosted a first-ever national conference call of anti-war central labor councils to plan a national day of workplace anti-war activity for March 12th. Participating in the call were labor councils from Philadelphia, Cleveland, San Francisco, San Jose, Contra Costa and Bergen counties, Madison, Albany, Ithaca and Duluth; and rural areas like the Monterey Bay region of California and Washington/Orange counties in Vermont. March 12 witnessed a wide variety of activities in all of these areas and other parts of the country as well.

USLAW is staffed almost entirely by volunteers, and your contributions are welcome. To find out more about U.S. Labor Against the War, to make a financial contribution, or to get the tools needed to establish a USLAW chapter in your community, be sure to visit the web site at www.uslaboragainstar.org.

Help Our Brothers and Sisters at Dish Network!

On May 29, 2002, eleven warehouse and office workers at Dish Network in Hayward became the newest members of CWA 9423 by a vote of 8 to 3. They wanted better wages - one administrative worker had only received a 19 cent wage increase in her entire 1½-year history at the company - and to control the cost and quality of their health benefits. Some workers who make \$12 per hour are paying \$200 a month for their insurance (not counting co-pays and deductible)! They also wanted relief from heavy-handed management, required overtime and lack of respect.

What they got instead was continued harassment and a vicious anti-union campaign, including *captive audience* anti-union lectures by consultants and corporate executives, and even the firings of 5 union supporters. The company's anti-union stance continues in spite of the employees' clear showing of support for the union. The company eventually agreed to one date for bargaining in January, but since that session has refused to meet again.

Workers' expectations are low. A group of technicians in New York voted for CWA in May 2001, installers in Pittsburgh, PA joined the Teamsters, and in Topeka, KS joined the IBEW. Dish is refusing to bargain in good faith with all of them.

The AFL-CIO has called a boycott of the company, and CWA is supplementing the boycott by reaching out to existing customers to show their support for the workers. CWA launched a program where customers of Dish can put stickers of support over the computer-readable numbers on their bills. This both shows support and slows down the company's operations. It gets their attention.

IF YOU HAVE DISH NETWORK, PLEASE CONTACT CWA IMMEDIATELY! Call us as well if you know anyone - friends, neighbors, family - who has the service. Contact organizer Josh Sperry at (408) 280-1285 or e-mail Josh at organize@cwa9423.com for a free pack of *Negotiate Now!* stickers and instructions on how to use them for maximum effect.

If you are not a customer of Dish Network, think about your choices. You can buy DirecTV or cable instead (no unions have a campaign against DirecTV).

For more information, check out the national CWA website www.dontbuydish.com. To further help our campaign, whether or not you are a customer, sign up for e-mail updates and action alerts.

**Dish Network wants high profits and low wages.
The workers want a job with a future.**

For more information, contact:

Communications Workers of America Local 9423
2015 Naglee Ave, San Jose CA 95128
(408) 280-1285 or organize@cwa9423.com

Just the Facts

Dish Network is a company that sells direct broadcast satellite TV to individual customers. They are one of the fastest growing and most profitable companies in this technology-intensive sector. But they do not share the millions they make with their lower-level employees: turnover is high and wages are low.

Raises take years to come and are often small. Health benefits are expensive for the workers, and there is no career path for employees to learn new skills and secure their future through education. Increasingly workers are asking, "If this is the technology of the future, how come my job has no future?"

Workers around the country have tried to join unions to gain a voice in their employment, however the management of Dish Network has repeatedly broken the law to stop workers from voting for a union, and are trying to bust the unions in places where the workers have voted union.

For example, in the San Francisco Bay Area, here is what Dish Network has done during a union organizing drive with CWA Local 9423:

-- Supervisors wrote up union supporters for minor infractions.

-- The regional manager wrote 4 personal letters to workers' homes urging them to reject CWA. He had never written to them before.

-- Brought in anti-union consultants and senior corporate executives from out of state for mandatory meetings. Workers were threatened with discipline if they did not attend these brainwashing sessions.

-- Supervisors threatened that workers would not get a raise if they voted for CWA.

-- Fired 5 employees, all union supporters. (As of October, 2002, Dish Network settled charges with the National Labor Relations Board and made penalty payments to these workers).

Dish Network continues to refuse to negotiate fairly with unionized workers in Farmingdale, NY; Pittsburgh, PA; Topeka, KS; and here in California. They only offer pay cutbacks and price hikes in health insurance, and won't accept workers' proposals. They are withholding raises from union workers but giving them to non-union workers.

New Mexico State Bar Employees File RC Petition with NLRB

by Angela Cornell

Last August, members of the mandatory New Mexico State Bar Association were outraged to learn that the Bar leadership had been fighting its employees' organizing campaign for months without informing the membership. By the time members of the Bar were apprised of the situation, the Regional Director's decision (Region 28) had already been appealed. Our bar dues had already been spent bringing in a management group to *educate* employees. The *pro bono* management lawyer representing the Bar in its fight against the unionization effort had already been given an award recognizing his contribution in the labor arena. At that point, the Bar President was already raising the possibility of spending \$20-\$30,000 to appeal an unfavorable Board decision to the Tenth Circuit.

On appeal the State Bar has asserted that the NLRB lacks jurisdiction because of the exemption from coverage of "[a]ny State and political subdivision thereof" contained in 29 U.S.C. § 152(2) and rooted in the eleventh amendment. There are no reported decisions of the NLRB exercising jurisdiction over a state bar association. There are cases, including *The State Bar of California and SEIU, Local 250*, in which the NLRB has declined jurisdiction finding that the political subdivision exemption applied. However, the organizational structure of the New Mexico State Bar is distinct from that of other bar associations wherein NLRB jurisdiction has been rejected.

The New Mexico State Bar was an agency of the New Mexico Supreme Court until 1978 when it was incorporated as a private nonprofit corporation. The State Bar is able to sue and be sued, enter into contracts and own and dispose of real property. The employees at issue are not considered to be public employees and enjoy none of the benefits of public employment. They cannot access the state's public employee retirement benefits or transfer to state jobs. The employee handbook provides the terms and conditions of employment — not the State Personnel Rules and Regulations. The handbook clarifies that, unlike public employees, State Bar employees are terminable at will and there is no recourse to the procedural protections afforded public employees, nor is there access to the State Personnel Board review. The employees are not treated as public employees for any purpose, but the State Bar would have us believe that exclusively for the current union campaign they are divested of their status as employees of a private 501(c) corporation.

The National Lawyers Guild was contacted to support the employees' effort and organized a very vocal campaign in support of the Bar employees right to unionize. A state-wide letter writing campaign to the Bar President and Board of Bar

Commissioners, publication of correspondence supporting the employees' rights in the Bar Bulletin, a public forum and participation in Bar meetings were swiftly undertaken. On Labor Day, the daily periodical with the largest state-wide distribution printed a Guest Op-Ed, denouncing the State Bar's opposition to the unionizing campaign and its distasteful conduct.

It is ironic that the State Bar is willing to go to such lengths to challenge its employees' right to organize when one considers part of its stated mission: to foster and maintain integrity and promote professionalism in the profession; improve relations between the legal profession and the public; and to encourage and assist in the delivery of legal services to all in need of such services. We have tried to remind the State Bar that the struggle of workers for a voice "through the process of collective bargaining is at the heart of the struggle for the preservation of political as well as economic democracy in America." Sen. Robert Wagner (1937). The appeal was filed in July 2002 and a decision should be forthcoming soon. If the decision is unfavorable to the State Bar, we will reactivate to vigorously oppose the use of our dues for a Tenth Circuit appeal.

Interestingly, because New Mexico has a mandatory bar association, we may be able to challenge the use of our bar dues using Beck/Hudson principles. In *Keller v. State Bar of California*, 496 U.S. 1 (1990), the Supreme Court held that the use of compulsory dues to finance political and ideological activities with which members disagree "violates their First Amendment right of free speech when such expenditures are not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the equality of legal services." Members may be able to challenge the use of dues for the Tenth Circuit appeal and receive a rebate of a small percentage of their dues. Even with that option, the most effective campaign may be internal political pressure supporting employees' right to organize collectively.

Gov. Bill Richardson Signs Public Employee Bargaining Act

New Mexico once again has a statute providing public employees with a mechanism for collective bargaining. In March the New Mexico legislature passed the Public Employee Bargaining Act and it was signed by Governor Bill Richardson. The previous act was vetoed by the former Governor Gary Johnson. While we would have preferred better language, it nevertheless represents a significant advance for public employees in the state.

Hoffman Plastic Compounds v. NLRB

Immigrant Workers: Preserving Rights and Remedies

by Amy Sugimori and Rebecca Smith, National Employment Law Project (NELP)
and Ana Avendaño and Marielena Hincapie, National Immigration Law Center (NILC)

On March 27, 2002, the U.S. Supreme Court decided *Hoffman Plastic Compounds v. NLRB*.¹ In *Hoffman*, the Supreme Court held that a worker who is undocumented could not recover the remedy of back pay under the National Labor Relations Act (NLRA).

The case involved a worker named Jose Castro who was working in a factory in California. Castro was fired in what Justice Breyer called “crude and obvious” violation of his right to organize.² The National Labor Relations Board (NLRB) had ordered the employer to reinstate Castro and provide him with back pay for the time he was not working because of the illegal discharge.

During an NLRB hearing, Castro admitted he had used false documents to establish work authorization and that he was undocumented. The Supreme Court, reversing the Board and the Court of Appeals in a 5-4 decision, held that undocumented workers cannot receive back pay under the NLRA. The Court focused its analysis almost entirely on the wrongdoing of the worker, saying that the Board could not award back pay under the NLRA, “for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud.”³

Prior to *Hoffman* and the passage of the Immigration Reform and Control Act (IRCA) of 1986, the Supreme Court had last addressed whether an undocumented worker was eligible for reinstatement and back pay under the NLRA in *Sure-Tan, Inc. v. NLRB*.⁴ In *Sure-Tan*, the Supreme Court upheld the NLRB’s construction of the term “employee” in the NLRA to include undocumented workers. In so doing, the Court observed that:

[i]f undocumented alien employees were excluded from participation in union activities and from protections against employer intimidation, there would be created a subclass of workers without a comparable stake in the collective goals of their legally resident co-workers, thereby eroding the unity of all the employees and impeding effective collective bargaining.⁵

Despite the enactment of IRCA, various federal courts had also addressed the question - prior to *Hoffman* - of what relief undocumented workers may seek for discrimination under Title VII of the Civil Rights Act,⁶ as well as wage and overtime violations under the Fair Labor Standards Act (FLSA),⁷ and violations of the NLRA. Nonetheless, the Court in *Hoffman* said that the “legal landscape had [now] significantly changed,” with IRCA.⁸

The *Hoffman* decision has emboldened employers to argue in many contexts that undocumented immigrant workers have no remaining legal rights, from arguments that a worker must plead and prove that s/he is documented in order to file a claim under the ADA,⁹ to arguments that undocumented workers are not entitled to workers’ compensation.¹⁰ Some courts will undoubtedly agree with these arguments. This article will review the case decisions thus far after *Hoffman*.

Hoffman’s Impact: The Knowing Employer

Hoffman dealt with an employer who allegedly did not know that the employee in question was undocumented and had used false documents to get his job. The Supreme Court did not address whether back pay would be available to an undocumented worker whose employer had knowledge of her lack of work authorization.¹¹ In a pre-*Hoffman* case, the NLRB had addressed this issue, in *NLRB v. APRA Fuel Oil Buyers Corp., Inc.*¹² There, the Second Circuit affirmed an NLRB award of back pay and conditional back pay to workers whose employer hired them “knowing” that they were undocumented and later retaliated against them for union activities.

Because the Supreme Court in *Hoffman* considered only the illegal activity of the worker, a different result is called for where the employer has engaged in wrongdoing. *Hoffman* has been distinguished in one subsequent case on this basis.¹³

Hoffman and the NLRB: What’s left?

In July 2002, the general counsel (GC) of the NLRB issued guidance interpreting how *Hoffman* affects the agency’s practice and procedures.¹⁴ The GC reaffirmed that undocumented workers are covered by the NLRA, and that an employer who discharges an employee in violation of the NLRA is liable regardless of the worker’s immigration status.

For purposes of back pay, the GC did not distinguish between cases where the employer did not know that it had hired an undocumented worker, as in *Hoffman*, and cases where the employer “knowingly employed” undocumented workers. However, the GC says that back pay is permitted “for work previously performed under unlawfully imposed terms and conditions.” The GC left open the question of whether back pay is available to undocumented workers who have been demoted.

As to reinstatement, the GC cites to *APRA*, stating that “[c]onditional reinstatement remains appropriate to remedy the unlawful discharge of undocumented discriminatees whom an employer knowingly hires.”¹⁵ A worker who benefits from such an order will be given a “reasonable period of time” to establish work eligibility and to comply with I-9 requirements, but they would not be entitled to back pay during that period of time.

Back pay is the only meaningful monetary remedy available to undocumented workers whose employers violate the NLRA. After *Hoffman*, an employer who violates the Act does so without suffering any economic loss, with the result that workers will be much less likely to exercise their remaining rights, unscrupulous employers will have no reason to respect those rights, and law-abiding employers will be tempted to violate the law or face a competitive disadvantage. The GC did leave open the possibility that “extraordinary remedies” may be available to undocumented workers. Those remedies traditionally have been available only in cases where an employer committed pervasive or outrageous unfair labor practices.¹⁶

Federal Anti-discrimination laws: Entitlement to Back pay, Compensatory and Punitive Damages

While the Supreme Court's decision in *Hoffman* focused on remedies under the NLRA and did not address whether undocumented workers are eligible for back pay and other relief under other federal antidiscrimination laws, employers are claiming that all remedies are affected by the decision.

After the *Hoffman* decision, the EEOC rescinded its former favorable "Enforcement Guidance on Remedies Available to Undocumented Workers."¹⁷ EEOC reaffirmed that it will continue to enforce its statutes¹⁸ on behalf of all employees, including undocumented workers. The EEOC stated that "[t]he Supreme Court's decision in *Hoffman* in no way calls into question the settled principle that undocumented workers are covered by the federal employment discrimination statutes."¹⁹ The Guidance does not clearly say that the EEOC considers the undocumented no longer eligible for back pay. It does say that the EEOC's determination that the undocumented were entitled to back pay was based on the NLRA.²⁰

No court has yet ruled on the availability of back pay in a discrimination case post-*Hoffman*, though there are reasons to believe that back pay under Title VII remains available. Nor has a court ruled on compensatory or punitive damages. However, under settled Title VII case law, at least compensatory and punitive damages should remain available. Since compensatory damages are not related to an individual's legal ability to work, these should not be affected by the Court's ruling in *Hoffman*. Secondly, the Second and Seventh Circuits have held that punitive damages are recoverable under Title VII even in the absence of any other damage award.²¹

FLSA remedies appear unaffected by Hoffman

One of the remedies available to undocumented workers that has clearly survived *Hoffman* is the availability of "back pay" for work actually performed under the FLSA. *Back pay* under FLSA is different from back pay under the NLRA and the anti-discrimination laws. Under the other laws, *back pay* is payment of wages that the worker would have earned if not for the unlawful termination or other discrimination. Under FLSA, *back pay* is payment of wages the worker actually earned but was not paid.²²

Prior to *Hoffman*, the Eleventh Circuit had held that an undocumented worker was eligible for back pay under the *FLSA in Patel v. Quality Inn South*.²³ Following the Supreme Court's decision in *Hoffman*, federal courts have repeatedly held that *Hoffman* is not relevant to back pay under the FLSA or the state wage and hour laws, and have made rulings favoring plaintiffs.²⁴

The US Department of Labor (DOL) has stated that it will fully and vigorously enforce the Occupational Safety and Health Act (OSHA), the FLSA, the Migrant and Seasonal Worker Protection Act (AWPA), and the Mine Safety and Health Act without regard to whether an employee is documented or undocumented.²⁵ The DOL statement leaves unaddressed the issue of back pay for undocumented workers who suffer retaliation on the job.²⁶

Moreover, at least one federal court, in an action brought under the FLSA for retaliation, has held that *Hoffman* did not bar the eligibility of undocumented workers for compensatory and punitive damages. In *Singh v. JUTLA & CD & R's Oil*,²⁷ the employer reported a former employee to the Immigration and Naturalization Service (INS) just one day after agreeing to settle the plaintiff's claim for unpaid wages. The court rejected the argument that *Hoffman* barred plaintiff's claim.

State Labor and Employment Laws: States Assert Themselves

The *Hoffman* decision has renewed employers' interest in arguing that undocumented workers are unprotected by state labor and employment laws.²⁸ Thus far, state remedies for violations of wage and employment laws are unaffected. Two states have reaffirmed their commitment to protecting undocumented workers' labor rights. On the other hand, some state decisions have limited the rights of the undocumented to certain forms of compensation under state workers' compensation laws.

State Law Back Pay. Regardless of the outcome of issues regarding back pay and other forms of damages in the federal courts, there is a strong argument that states are free to make their own policy choices under their own state laws regarding what remedies are available to undocumented workers. Of the cases litigated thus far, none has squarely addressed the issue of the continuing availability of back pay under state law. However, shortly after the *Hoffman* decision, the state labor agency in California clarified that it will continue to seek back pay for undocumented workers. That statement was followed by enactment of a state law that reaffirmed the entitlement to back pay and other damages.

In May, 2002, the California Department of Industrial Relations posted a statement on its website clarifying that it will "Investigate retaliation complaints and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about wages or workplace safety and health, without regard to the worker's immigration status."²⁹ The California legislature followed with a new law that amends the Civil, Government, Health and Safety and Labor Codes and makes declarations of existing law. It reaffirms that "[a]ll protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment who are or who have been employed, in this state."³⁰ It also limits inquiries into immigration status of complainants.³¹

Washington State's Human Rights Commission has also clarified in a letter that it will continue to seek back pay as a remedy for violation of Washington State's Law Against Discrimination.³²

Unpaid Wages. Of the state cases litigated thus far, only one court has addressed the issue of unpaid wages for "work performed." The holding was the same as under the FLSA, distinguishing work already performed from traditional back pay.³³ The California and Washington labor agencies' statements outlined here also assure undocumented workers that their rights to collect unpaid wages will continue to be protected post-*Hoffman*.

Since *Hoffman*, the Director of the Washington State Department of Labor and Industries has issued a statement that undocumented immigrants continue to be entitled to wage replacement benefits after the *Hoffman* decision:

The 1972 law that revamped Washington's workers' compensation system is explicit: All workers must have coverage. Both employers and workers contribute to the insurance fund. The Department of Labor and Industries is responsible for ... providing workers with medical care and wage replacement when an injury or an occupation disease prevents them from doing their job. The agency has and will continue to do all that without regard to the worker's immigration status.³⁴

Workers' Compensation. Employers in two states have successfully challenged undocumented workers' entitlement to workers' compensation coverage, or to elements of that coverage, after *Hoffman*.

The Supreme Court of Pennsylvania has held that, while an injured undocumented worker is entitled to medical benefits, illegal immigration status would justify terminating benefits for temporary total disability (wage loss) benefits. *The Reinforced Earth Company v. Workers' Compensation Appeal Board*.³⁵ The Michigan Court of Appeals has also recently decided that wage loss benefits may be cut off to undocumented workers as of the date that the employer "discovers" that the worker is unauthorized. *Sanchez v. Eagle Alloy*.³⁶ Cases like these encourage unscrupulous employers to suddenly "discover" a workers' unauthorized status as soon as he or she suffers an on the job injury, thereby lowering the employer's workers' compensation premiums. Unfortunately, they are likely to become more prevalent after *Hoffman*.

Limiting Forced Disclosures of Immigration Status in Litigation

Perhaps the greatest obstacle that advocates are facing since *Hoffman* has been persistent attempts by defendants to inquire into plaintiffs' immigration status. They have claimed that the issue of plaintiffs' immigration status is relevant to the potential damages for which the employer will be liable. Discovery into a worker's immigration status-whether by the agency or by the employer-is likely to have a serious chilling effect on immigrant workers contemplating whether to file a claim and on those who have courageously filed claims.

The NLRB and the EEOC have limited such inquiries. They have concluded that while a worker's immigration status may be relevant in determining remedies under the NLRA and the federal antidiscrimination laws, immigration status has no bearing on liability. The NLRB GC has determined that "[r]egions have no obligation to investigate an employee's immigration status unless a respondent affirmatively establishes the existence of a substantial immigration issue. A substantial immigration issue is lodged when an employer establishes that it knows or has reason to know that a discriminatee is undocumented."³⁷ Similarly, the EEOC has stated that it "will not, on its own initiative, inquire into a worker's immigration status. Nor will the EEOC consider an individual's immigration status when examining the underlying merits of a charge."³⁸

Neither agency has clarified the burden employers will have to meet to establish that an immigration issue exists, thereby warranting discovery into the workers' immigration status. The NLRB, for example, has not made clear what constitutes a "substantial immigration issue," other than stating that it is not mere speculation. Neither agency has made clear whether the method by which an employer discovers that a worker lacks work authorization will any bearing on the agency's decision to accept that information.

Defense attorneys are increasingly using the discovery process to inquire into a plaintiff's immigration status, ostensibly to obtain information that is allegedly relevant to the damages claimed. But these measures clearly serve to intimidate the plaintiff into dropping the charges altogether, for fear potential immigration consequences should she be retaliated against. For example, in *Flores, et al. v. Albertsons*, defendants used *Hoffman* to request immigration documents from members of a class action brought by janitors in federal court for unpaid wages under state and federal law.³⁹ The court held

that *Hoffman* did not apply to claims of unpaid wages and noted that allowing such discovery was certain to have a chilling effect on the plaintiffs (i.e., would cause them to drop out of the case rather than risk disclosure of their status). In a similar case for unpaid wages and overtime, *Liu et al v. Donna Karan International, Inc.*⁴⁰ the defendant made a discovery request for the disclosure of plaintiff garment workers' immigration status, but the federal court denied the request on the grounds that release of such information is more harmful than relevant.⁴¹ In another case under Title VII, *Rivera et al, v. Nibco*, plaintiffs had secured a pre-*Hoffman* protective order, which prohibited the defendant from using the discovery process to inquire into plaintiffs' immigration status.⁴² Immediately following the *Hoffman* decision, the defense moved for reconsideration of that protective order, subsequently appealing to the Ninth Circuit for an interlocutory appeal, which is pending.

Interamerican Court to address Hoffman issue

Shortly after the U.S. Supreme Court issued its decision in *Hoffman*, the government of Mexico filed a request for an advisory opinion with the Interamerican Court of Human Rights in Costa Rica. Mexico posed a question to the court whether international law would be violated when a country limits labor law remedies available to workers based on the irregularity of their migrant status. A number of OAS states responded to the request, including Honduras, El Salvador, Canada, Nicaragua, Costa Rica and the Interamerican Commission on Human Rights. Several groups in the US filed amicus curiae briefs, including NELP, professors Sarah Cleveland and Beth Lyon, and NILC. The brief authored by NELP and others was signed onto by both the Immigration Project and Labor and Employment Committees of the National Lawyers Guild, as well as some 50 other labor, civil rights and immigrant groups. It argues that discrimination prohibitions in international law are violated by the Court's ruling, and that the U.S. justification for discrimination against the undocumented cannot be justified as based on reasonable and objective criteria, and is not proportional under international law. NELP's brief also argues that the decision violates international protections of freedom of association.

Oral argument for states was held on February 24, 2003, and oral argument for the *amici* in the case will be held in June of 2003, with a decision of the court to follow.

Conclusion

While most of the litigation undertaken since *Hoffman* has been at the federal court level, it is likely that some state courts will continue to limit its impact on remedies available to undocumented workers under state employment and labor laws. *Hoffman* can and should be distinguished in cases involving a "knowing" employer. Advocates should take care to limit its expansion to federal laws other than the NLRA and to remedies other than back pay.

Strong arguments can be made that states are free to make their own policy choices under state laws regarding what remedies are available to undocumented workers. This presents an opportunity for advocates to work with their state administrative agencies to develop generous state policies that provide all workers-regardless of immigration status-with the same rights and remedies and prevent a worker's immigration status from being disclosed. Efforts at both the federal and state levels to pass legislation which addresses the Supreme Court's *Hoffman* decision are also critical. At the federal level advocates hope to introduce legislation to turn back the *Hoffman* decision. A federal bill would provide that all employees,

regardless of immigration status or whether they used false documents, are entitled to the same rights and remedies under all employment and labor statutes. At the state level, advocates have begun exploring possible state legislation like that passed by California. The National Employment Law Project (NELP) and National Immigration Law Center (NILC) have released model statements for advocates and organizers to use with their administrative agencies. These are available on-line.⁴³

Finally, although the *Hoffman* decision has served as another anti-union and anti-immigrant tool for unscrupulous employers, it also presents us with an incredible opportunity to build strong alliances among labor unions, immigrant rights groups, community-based organizations, faith-based coalitions, and business allies who understand that denying back pay to undocumented workers creates greater economic incentive for abusive employers to hire and further exploit vulnerable workers, who work hard to support their families and pay taxes. Building and sustaining these alliances are critical to addressing the mid- to long-term goal of achieving legalization for immigrant workers, which recognizes their contributions, and repealing employer sanctions. These sanctions have criminalized workers, forcing immigrants like Jose Castro to purchase false documents as a means of survival, while employers like Hoffman Plastic Compounds use the immigration laws to bust unions and prevent all employees from improving their workplace conditions.

Footnotes

¹ 535 U.S. 137, 122 S.Ct. 1275 (2002)

² 122 S.Ct. at 1285

³ *Id.*, 122 S.Ct. at 1283

⁴ 467 U.S. 883

⁵ *Id.* at 893

⁶ See, *eg. Rios v. Local 638*, 860 F.2d 1168, 1173 (2d Cir. 1988); *EEOC v. Hacienda Hotel*, 881 F.2d 1504 (ED Cal. 1989). But see, *Egbuna v. Time Life*, 153 F.3d 184 (4th Cir. 1998) (holding that individual without work authorization was not "qualified" for job, and therefore not protected by Title VII); and *Reyes-Gaona v. North Carolina Growers' Assn.*, 250 F.3d 861 (4th Cir. 2001) (holding that the ADEA did not protect foreign national applying for an H-2A job because he was not authorized to work, and therefore not qualified).

⁷ See, *Patel v. Quality Inn South*, 846 F.2d 700 (11th Cir. 1988)

⁸ *Hoffman*, 122 S.Ct. at 1282

⁹ See, *Lopez v. Superflex*, 2002 WL 1941484 (SDNY 2002)

¹⁰ See, *Sanchez v. Eagle Alloy*, 2003 WL 57544 (Ct. App. Mich. 2003)

¹¹ See, *Hoffman*, 122 S.Ct. at 1287 (Dissenting, J. Breyer)

¹² 134 F.3d 50 (2nd Cir. 1997)

¹³ *Singh v. JUTLA & CD & R's Oil*, 214 F. Supp. 2d 1056 (ND Cal. 2002)

¹⁴ See, "Procedures and Remedies for Discriminatees Who May Be Undocumented Aliens After *Hoffman Plastic Compounds Inc.*" GC 02-06 (July 19, 2002), available at www.nlr.gov/gcmemo/gc02-06.html

¹⁵ *Id.*

¹⁶ *Fieldcrest Cannon v. NLRB*, 97 F.3d 65, 74 (4th Cir. 1996)

¹⁷ U.S. Equal Employment Opportunity Commission, *Rescission of Enforcement Guidance on Remedies Available to Undocumented Workers Under Federal Employment Discrimination Laws* (Jun 27, 2002) available at www.Eeoc.gov/docs/undoc-rescind.html

¹⁸ The EEOC enforces Title VII, the ADA, the ADEA and the Equal Pay Act

¹⁹ *Id.*

²⁰ One court has indicated that it might distinguish back pay under the NLRB from back pay under Title VII; however, the issue was not squarely addressed and ruled on in that particular case. *De la Rosa v. Northern*

Harvest Furniture, 210 F.R.D. 237 (C.D. Ill. 2002)

²¹ See, *Cush-Crawford v. Adchem Corp.*, 271 F.3d 352, 354 (2d Cir. 2001); *Timm v. Progressive Steel Plating, Inc.*, 137 F.3d 1008, 1009 (7th Cir. 1998).

²² There is one form of back pay under the FLSA that more closely resembles back pay under the NLRA and the anti-discrimination laws. This form of back pay appears in the anti-retaliation provision of the FLSA - and is payment of wages that the worker would have earned if not for his or her unlawful termination by the employer in retaliation for having initiated a complaint under the FLSA.

²³ See, *supra* n. 7

²⁴ See, *Flores v. Albertson's, Inc.*, 2002 WL 1163623 (C.D. Cal. 2002); *Liu et al v. Donna Karan International, Inc.*, 207 F.Supp. 2d 191 (SDNY 2002)

²⁵ U.S. Department of Labor, *Hoffman Plastic Compounds, Inc., v. NLRB*, Questions and Answers

²⁶ See also, *Fact Sheet #48: Application of U.S. Labor Laws to Immigrant Workers: Effect of Hoffman Plastics decision on laws enforced by the Wage and Hour Division* available at www.dol.gov/esa/regs/compliance/whd/wdfs48.htm

²⁷ 214 F. Supp. 2d 1056 (ND Cal 2002)

²⁸ Post-*Hoffman*, a worker sued his co-worker for injuries arising out of an automobile accident. The Court ruled that the suit was barred by workers' compensation law, and therefore did not reach the issue raised by the defendant, that the immigrant plaintiff would not have been entitled to lost wages in tort after *Hoffman*. See *Flores v. Nissen*, 213 F. Supp. 2d 871 (ND Ill 2002)

²⁹ California Dept of Industrial Relations, *All California workers are entitled to workplace protection* (May 31, 2002) available at www.dir.ca.gov/qaundoc.html

³⁰ See, Cal. Civ. Code 3339 (2002); Cal. Govt Code 7285 et seq. (2002); Cal. Health & Safety Code 24000 et seq. (2002); Cal. Lab. Code 1171.5 (2002). The full text of the California bill is available at www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1801-1850/sb_1818_bill_20020929_chaptered.html

³¹ *Id.*

³² Letter dated October 7, 2002 from Susan Jordan, Executive Director, Washington State Human Rights Commission, to Antonio Ginatta, Director, Washington State Commission on Hispanic Affairs (on file with authors)

³³ See, *Valadez v. El Aguila Taco Shop*, No. GIC 781170 (San Diego, Cal. Superior Ct. 2002) (holding that *Hoffman* does not affect an undocumented worker's right to recover unpaid wages under the California Labor Code); in *De la Rosa v. Northern Furniture*, 210 F.R.D. 237 (CD Ill 2002) a claim was pending under state law, but the court did not reach the merits of the claim.

³⁴ Statement dated May 21, 2002, by Gary Moore, Director, available at www.nelp.org

³⁵ 810 A.2d 99 (Pa, 2002)

³⁶ 2003 WL 57544 (Ct. App. Mich. 2003)

³⁷ See, *supra* n. 14

³⁸ See, *supra* n. 17

³⁹ 2002 WL 1163623 (CD Cal 2002)

⁴⁰ 207 F.Supp.2d 191 (SDNY 2002)

⁴¹ For other examples of protection orders, see, *Topo v. Dhir*, 210 F.R.D. 76 (SDNY 2002); *Flores v. Amigon*, 233 F. Supp.2d 462 (EDNY 2002); *De la Rosa v. Northern Harvest Furniture*, 210 F.R.D. 237 (CD Ill 2002); and *Cortez v. Medina's Landscaping*, 2002 WL 31175471 (ND Ill 2002)

⁴² 204 F.R.D. 647 (ED Cal 2001)

⁴³ National Employment Law Project, *Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights* (Jan 2003) available at www.nelp.org/lowpayhighrisk/cover1.htm

Guild *Guide to Labor Law* - Valuable Asset to Labor Law Practitioners and Union Representatives

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If you are interested in contributing to the *Guide*, keep reading. Keeping the *Guide* current is, of course, a constant challenge. For that reason we are asking for volunteers willing to take on responsibility for reviewing and updating any part of the following chapters:

1. Organizing the Unorganized [focusing on the NLRA]
2. Opposing Discriminatory Discharges [rights under the NLRA, constitutional law, whistleblower statutes, state law doctrines and related issues of preemption, deferral, etc.]
3. The Duty to Bargain Collectively [focusing exclusively on the NLRA]
4. The Right to Strike and [focusing on the NLRA, with some coverage of the RLA]
5. The Rights of Construction Workers [We need someone to update the section on exclusive hiring halls; someone else is updating the rest of the chapter.]
6. Employment Discrimination Law
8. The Fair Labor Standards Act
9. Pensions and Other Employee Benefits
11. The Duty of Fair Representation

All these chapters have been regularly updated over the last five years; in many cases we have substantially overhauled them. We would like to spread the responsibility further in order to lighten the load for our chapter editors and to gain fresh insights from those who are practicing in these areas. We are looking for people interested in taking on a whole chapter or just a portion of one.

Elise Gautier and Henry Willis are the co-editors for the *Guide*. We can help you with the editing process and with discrete research issues. We will also be eternally grateful for your help. Contact either of us: gautier@attbi.com or hmw@ssdslaw.com if you are interested in any of these areas. In addition, we are also looking for volunteers willing to write a chapter on health and safety issues—a difficult, but very important, subject. Let us know if you're brave enough to take on all or part of that challenge.

People who make significant contributions to the treatise will receive a complimentary copy of the treatise and the updates for as long as they continue contributing.

Unions Urged to Reconsider Support of Jerry Lewis Muscular Dystrophy Telethon

by Harriet Johnson

For decades, the *Jerry Lewis* telethon for the Muscular Dystrophy Association has dominated the airways in some 200 cities for some 20 hours on Labor Day weekend. Perhaps because of its timing, perhaps because it's been considered a feel-good charity, it has enjoyed enormous support from organized labor. The 2002 telethon opened with a union representative presenting a big check, and many others, totaling millions of dollars, followed. Throughout the broadcast, performers' and technical unions received effusive thanks for making the show possible.

The disability rights movement wants unions to end their support of the telethon. Within the disability movement, the

telethon is hardly a feel-good charity. It is a symbol of bigotry.

In 1990, telethon host Jerry Lewis set off a firestorm of controversy in a magazine article in which he imagined what it would be like to have muscular dystrophy. Numerous stereotypes outraged the disability community, but the worst was when Lewis said if he had muscular dystrophy, he'd have to learn to be "half a person." When protesters took to the streets, Lewis refused to apologize, and MDA stood by him. In the years since, a steady stream of insults have continued. Lewis has called disabled children "mistakes who came out wrong,"

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Coca-Cola Human Rights Abuses In Colombia

by Dan Kovalik, Attorney, United Steelworkers of America

Isidro Segundo Gil, an employee at a Coca-Cola bottling plant in Colombia, was killed at his workplace by paramilitary forces. This assassination is the centerpiece of the Alien Tort Claims Act suit filed in Miami in July, 2001, against Coca-Cola, Panamerican Beverages (the largest soft drink bottler in Latin America) and Bebidas y Alimentos (a bottler owned by Richard Kirby of Key Biscayne, Florida, which operates the plant in which Gil was killed).

Minutes after the paramilitaries showed up at the Carepa plant gate, they fired 10 shots at Gil, a member of the union executive board, mortally wounding him. An hour later, another union leader was kidnapped at his home. That evening, a building that housed the union's offices, equipment and records was set ablaze.

The next day, a heavily armed group returned to the plant, called the workers together and told them if they didn't quit the union by 4 p.m., they too would be killed. Resignation forms were prepared in advance by Coca-Cola's plant manager, who had a history of socializing with the paramilitaries and had earlier "given (them) an order to carry out the task of destroying the union," the lawsuit says. Fearing for their lives, union members at Carepa resigned *en masse* and fled the area. The company broke off contract negotiations, the paramilitaries camped outside the plant gate for the next two months, and the union was crushed.

The murder of Isidro Gil and subsequent destruction of the union by paramilitaries, followed explicit threats by the bottling plant manager, Ariosto Mosquera, who publicly stated he would wipe out the union with the paramilitaries. Prior to the murder, the union at the plant, *Sinaltrainal*, had sent letters to Bebidas officials as well as officials of Coca-Cola Colombia, a wholly-owned subsidiary of the Coca-Cola Company, asking them to prevent the imminent violence that they feared. They never received a response to these pleas.

In the lawsuit, Gil's union *Sinaltrainal*, the International Labor Rights Fund (ILRF), and the United Steelworkers of America assert that the Coke bottlers "contracted with or otherwise directed paramilitary security forces that utilized extreme violence and murdered, tortured, unlawfully detained or otherwise silenced trade union leaders." Indeed, we have evidence that at least in one city, a local Coca-Cola bottling plant manager makes payments to the paramilitaries every 28th of the month. Other connections between the local Coca-Cola bottling plants in Colombia and the paramilitaries continues to this day.

For example, union officials witnessed local management meeting with paramilitaries inside the Coca-Cola plant as late as October, 2002. Specifically, they witnessed a meeting between managers Reynaldo Gonzalez and Martha Yaneth Orduz and known paramilitaries, including Saul Rincon. When Reynaldo Gonzalez was confronted about these meetings and asked to confirm whether the individuals he was meeting with were indeed paramilitaries, he replied, "yes, they are paramilitaries, and members of an association, why don't you say that to them?" Paramilitary Saul Rincon later appeared at the company and told a union leader that Reynaldo Gonzalez, the company official, had asked for him.

In addition, on January 13, 2003, paramilitary forces publicly announced that they are going to kill members of *Sinaltrainal* because they are interfering with the business of the company at the Barranquilla Coca-Cola bottling facility. Of even more concern is the fact that the paramilitaries announced it was members of management at this facility who ordered this violence.

It is our hope that through the lawsuit in Miami, we can stop this type of corporate-sponsored violence against trade unionists in Colombia - the most dangerous country in the world for trade unionists - and save lives in Colombia.

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and compares his critics to Nazi storm troopers. As the disability rights movement is trying to move from pity to rights, this kind of bigotry — and its continued legitimacy by association with a multimillion dollar charity — gets in the way.

In May 2001, Lewis told a TV reporter, "You're a cripple in a wheelchair and you don't want pity? Stay in your house!" That comment galvanized street protests in over a dozen cities. Disabled people, who are fighting hard for the right to get out of the house, out of institutions, and into the streets of their communities, are demanding that Lewis be replaced as MDA's spokesman as a first step. In South Carolina, AFL-CIO President Donna Dewitt sent a letter urging unions to

reconsider support of the MDA Telethon and work instead in solidarity with the disability rights movement. We want the union movement nationally to get the word.

To learn more about the telethon should log onto www.cripcommentary.com/LewisVsDisabilityRights.html. Donna Dewitt's letter is posted at that site. If you will support this effort, please contact the writer at HarrietJohnson@compuserve.com.

Harriet Johnson is a lawyer in Charleston, SC, and is a member of the NLG L&EC as well as the Disability Rights Committee. She holds the world endurance record for telethon protesting — picketing and handbilling for 12 years without interruption.

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Marielena Hincapie, Attorney, Natl Immigration Law Center

Moderator and will discuss Columbia labor issues

Dan Kovalik, Attorney, United Steelworkers of America

re the lawsuit against Coke in Columbia

Jeanne Mirer, Attorney, Pitt Dowty McGehee Mirer & Palmer

re the Intl Labor Rights Commission and the Intl Assoc of Democratic Lawyers

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