



## 2004 Elections - What's At Stake - What's Our Role

*Editor's Note:* **The AFL-CIO Lawyers Coordinating Committee has launched a comprehensive program to engage the union attorneys in the fight for our nation's future. The program will be launched at the LCC's national conference, *Changing the Political Climate for Union Representation*, in New York at the end of April.**

The program will include fundraising both for Kerry and for other efforts to promote working peoples' issues this year, a massive mobilization to protect working peoples' right to vote and to make sure there are no more Floridas, and a broader effort to encourage and support union attorneys becoming activists in the election, including trainings and sample materials for writing op-eds and letters to the editor and helping to organize local and web-based networks.

In the area of voting rights protection, the LCC will be working with voting rights groups at the local and national level to ensure that every aspect of the 2004 election is planned to protect and promote working families' right to vote.

Already, a number of LCC lawyers have volunteered to coordinate fundraising efforts in their states, and the LCC will be looking to appoint coordinators for voting rights and other specific campaign elements on a state-by-state basis in the coming weeks.

**For more information, contact Damon Silvers at (202) 637-3953 or [dsilvers@afcio.org](mailto:dsilvers@afcio.org).**

*Additional information about the AFL-CIO political program is available on their website, excerpts from which are below:*

### **The Union Difference:**

#### **A Political Program for Working Families**

"The AFL-CIO develops strategies to strengthen the union movement's political program and increase political participation among working families. Beginning with the 1996 elections, the AFL-CIO combined its resources with affiliate unions to ensure working families have a voice in politics and candidates address the issues that matter to working people.

"Still, the political playing field increasingly favors corporations and the very rich. In 1992, Big Business outspent working family advocates by 9-1. In 2000, the corporate cash gap widened even further, increasing to 15-1 in Big Business' favor. In the 2002 off-year elections, the corporate cash advantage in political spending over working families was a whopping \$709 million to \$62 million. With the 2004 presidential election in sight, corporate political donations are expected to soar even higher.

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### **When the Chips Are Down – We'll Be There**

*by James Piotrowski, Herzfeld & Piotrowski*

Looking ahead now to the general presidential election, and remembering the last one, reminds me that while most American elections go off without a hitch, democracy always needs its watchdogs and foot-soldiers.

In the days immediately following the 2000 presidential election, many of us watched with disgust as George Bush and his cronies stole an entire election. The NLG L&EC did not just watch, it sprang into action. Just two days after the election the call went via e-mail stating that the labor movement was joining the fray in Florida and that bodies (bodies with law licenses) were needed in that state. I was one of the lucky individuals who was able to work directly in support of democracy and the rule of law, and I was able to do so only with the support of the NLG and the L&EC and its members.

For five days I joined a team of hundreds, mostly labor lawyers, from around the country. We interviewed thousands of Florida voters, collecting evidence and affidavits about confusing "butterfly" ballots, voters who never missed an election suddenly discovering that their names had been removed from the registration lists, and some of the clearest evidence of race-based election fraud that one is likely to encounter. The lawyers were not alone in this effort. Hundreds of local citizens, anyone with a notary stamp and a willingness to help, joined us as we collected affidavits or worked in a huge call room that just weeks before had been used for get-out-the-vote work, but which had been transformed for a few days into the largest, rowdiest, most productive law office in the country.

One evening several of us set up tables outside the community center at a Boca Raton retirement community. That night I met and interviewed half a dozen Holocaust survivors, and dozens of people who, decades before, had been the backbone of America's peace movement. This group, like me, like the nation, wondered how it was that in a community over 90% Jewish and where the word "liberal" still carries its classical meaning, Pat Robertson had gained hundreds of votes. Anyone who saw the disappointment, fear, and dread on the face of a Holocaust survivor uncertain whether she accidentally gave a vote to the likes of Robertson would surely have rushed to Florida to join the fight. Anyone who received the thanks of that same person for taking their statement and promising to continue the fight would have been glad they were there, and would have felt that our movement is truly a movement of several generations. Never before have I

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# Coca-Cola - The Drink that Represses

by Ursula Levelt

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## NYC Report

**On October 21, 2003, students at Cardozo Law School gathered to hear about Coca-Cola, Colombia and murders.** This gruesome connection is being made more than visible by the logos of the Killer Coke Campaign. And it is true: at least eight trade union leaders at Coca-Cola bottling plants have been murdered by right-wing paramilitaries. Coca-Cola is not the only US corporation dirtying its hands in Colombia. According to the most recent human rights report issued by the US State Department, 1,875 labor activists have been murdered in Colombia since 1991, 178 people in 2003 alone. The same report admits the majority of the victims were killed at the hands of paramilitaries, which continue to be aided and abetted by the Colombian military, with lavish US funding.

**The audience heard first hand about the experiences of Francisco Ruiz, International Affairs Secretary of Sintramienergetica, the Colombian union of miners and oil workers.**

The union was organizing workers at Drummond Coal Company, a wholly owned US corporation. In 2000 three workers died after a mine caved in and the union responded by demanding improved safety procedures. Ruiz called the union merely a stone in the shoe of the employers. But to eliminate the stone, management used a powerful tool, the paramilitaries, murdering in 2001 two presidents, one vice-president and two activist members of the union. Ruiz himself was also the object of threats. When the paramilitaries came looking for him, they did not find him but killed his younger brother instead. Ruiz is now in exile in the United States.

**Yenly Angelica Mendez, a human rights lawyer in Colombia, spoke about how Colombians are the victims of a macabre consortium between multinational powers, the government of Colombia, and local economic powers.** Paramilitaries are used to attack anyone who is fighting for a decent life, be it trade unionists, peasants, or indigenous people. According to Mendez, **Plan Colombia** is not a strategy against drugs, nor even a strategy against guerillas (who are only getting stronger). It is a strategy to use resources from the US to wage war against the people. For example, she estimated that **Plan Colombia** has displaced over 2.5 million people from the lands they traditionally cultivated.

**Dan Kovalik, Assistant General Counsel of the United Steelworkers of America, focused on how lawyers can use the law to hold US corporations accountable for these crimes.** Together with the International Labor Rights Fund, Kovalik is suing the Coca Cola Company, Drummond Coal Company, as well as Occidental Petroleum, for transgressions in Colombia. The lawsuits are based on the Alien Torts Claim Act (ATCA), a statute passed in 1789, giving District Courts jurisdiction over torts committed against aliens in violation of the law of nations. The law was first used to bring torturers to justice. Kovalik recently overcame a motion to dismiss filed by Drummond. *Estate of Valmore Lacarno Rodriquez v. Drummond Company, Inc.*, 256 F. Supp.2d 1250 (ND Alabama 2003). The District Court found no alternative forum to pursue the claims in Colombia due to overwhelming evidence that murders were being committed with impunity there. The Court also found the corporate entity Drummond was a person. Finally, it found the torts were committed **under color of state law**, another requirement of the Act, and that the torts were not acts of the Colombian state itself. If the court had found the latter, the case would have been dismissed for interfering

with international relations. In the Coca-Cola case, the judge accepted Coca-Cola's argument it was not liable for acts by bottling plants with which it has franchise agreements. *Sinaltrainal v. The Coca-Cola Company*, 256 F. Supp.2d 1345 (SD Florida 2003). This despite facts to support a contrary ruling. At one bottling plant management publicly threatened that the paramilitaries would stop the union. The union sent an open letter to Coca Cola asking them to interfere, but Coca Cola did not respond nor investigate the claim. Not long thereafter, Isidro Gil, a union officer, was murdered inside the plant. After the murder, the owner tried to sell the Coca-Cola franchised bottling plant, but Coke objected and the owner did not sell. Another bottling plant (formerly Penamco, now Fensa) made direct payments to paramilitaries. Coke controls a majority share of stock in that plant. The Florida case is on appeal.

**Dean Hubbard, co-chair of the NLG Labor and Employment Committee and Joanne Woodward Professor at Sarah Lawrence College, offered another approach to the crisis in Colombia.** The newly formed International Commission for Labor Rights is sending a delegation of top labor lawyers to Colombia for an investigation. The Commission's goal is to get the International Labor Organization, affiliated with the UN, to establish a Commission of Inquiry. There can be no doubt that the international labor standards the ILO seeks to uphold are being violated in Colombia by bloodier means than anywhere else in the world. Colombia is quite simply the most dangerous country in the world for trade unionists with a murder toll higher than that of all other countries in the world combined.

**Finally Ray Rogers of the Corporate Campaign talked about extra-judicial ways to hold US corporations accountable.** Attack their image, he said, write letters to Coke board members, and get public pension funds to divest from Sun Trust Bank (a bank whose leadership is completely intertwined with Coke's top officers). Campus action is important: the University College in Dublin, Ireland, passed a resolution to remove all Coke products from campus. Bard College will end its contract with Coke in May. The bus drivers' union in Boston removed Coke machine from four bus depots. New York City is a hot spot for action as five top Coke people are headquartered in NYC. Rogers invited all to visit [www.killercoke.org](http://www.killercoke.org) for key information and to get involved. After all, if the Colombian unions lose their fight, we all lose. What's the economic model for Colombia now, will be the model for the rest of us tomorrow.

**Many thanks to Julia Zuckerman, 2L at Cardozo,** for turning out a large crowd. We are waiting to see Coca Cola vending machines being moved off the Cardozo campus, Julia!

The panel at Cardozo was preceded by a reception for unions and other labor activists hosted by the law firm of Kennedy, Schwartz & Cure and Local One of the Amalgamated Lithographers. The reception raised \$2000 for families of the victims in Colombia.

**Here's to labor solidarity!**

The NYC NLG Labor and Employment Committee meets the first Monday of the month for a happy hour at Flannery's bar, 205 West 14th Street, off Seventh Avenue. Join us from 6 - 8 pm. Call Ursula for more information at (212) 865-6265 or [ursulalevelt@yahoo.com](mailto:ursulalevelt@yahoo.com).

# Protecting Immigrant Workers' Rights to Workers' Compensation post-Hoffman Plastic: What NLG Lawyers Need to Know

by Rebecca Smith, Attorney, National Employment Law Project

There are about 6 million undocumented immigrants working in the US economy. Most work in the agriculture, services and manufacturing sectors. Construction includes 600,000 undocumented workers; 700,000 work in restaurants. These are among the lowest-paying, highest risk jobs in the US.

These workers are employed in the shadows. They are hired with a *wink and a nod* towards their immigration status, tolerated as long as they are working hard and not complaining, and then subjected to retaliation in the form of threats to call immigration authorities. When injured or making claims for wages or for discrimination, employer scream betrayal.

Hispanics are more likely to die or get hurt on the job than any other ethnic group, according to Bureau of Labor Statistics data. And while the fatality rates for blacks and non-Hispanic whites have fallen over the past 10 years, it's barely changed for Hispanics. **For foreign born workers, the death rate went up.** A recent AP article noted that "The jobs that lure Mexican workers to the US are killing them in a worsening epidemic that is now claiming a victim a day. ... The deaths are almost always preventable and often gruesome: Workers are impaled, shredded in machinery, buried alive. Some are 15 years old." Accidents like these suggest employers assign Mexicans to the most glaringly perilous tasks, says Susan Feldmann, who fields calls from Spanish-speaking workers for an institute within the federal Centers for Disease Control. "They're considered disposable."

**When immigrant workers are unable to work due to an injury, they should receive workers' compensation - not be tossed out like the garbage.**

In 2002, the US Supreme Court decided *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), and held, by a slim 5-4 margin, that undocumented workers are not entitled to back pay under the National Labor Relations Act, if illegally fired for engaging in organizing campaigns. The Court reasoned a worker who used false documents to get his job, could not receive back pay "for years of work not performed ... for a job obtained in the first instance by criminal fraud."

*Hoffman Plastic* caused an onslaught of litigation in which employers argued injured workers are not entitled to workers' compensation, wage loss compensation in tort claims, or even unpaid wages, if the worker turns out to be undocumented.

**Regarding the continued availability of workers' compensation post-Hoffman, undocumented workers are winning.** Despite employers' and their attorneys' best efforts, both prior and subsequent to *Hoffman*, undocumented immigrants continue to be entitled to workers' compensation in nearly every state in the union. They are excluded from workers' compensation coverage in Wyoming, by express exclusion in the workers' compensation statute. And only a Virginia court decision held the workers were not covered. Immediately after that ruling, employers facing the prospect of tort liability convinced the legislature to reinstate undocumented workers in

the state law. Workers' compensation challenges occurred in 11 states in less than two years.

**Success for undocumented workers in obtaining workers' compensation is not isolated.** Courts around the country have continued to hold that undocumented workers have the same rights as other workers to minimum wage, overtime pay, and compensatory and punitive damages for their employers' violations of discrimination and retaliation laws. At least three courts have held that undocumented workers bringing tort cases continue to be entitled to lost wages.

**On issues surrounding disclosure of immigration status in litigation, the cases have been more troubling.** Employers take a sudden interest in their employees' immigration status as soon as the employee makes a claim for wages or gets injured. In many of the reported cases, workers admit their immigration status in the course of litigation. In some cases, the workers had never been asked about their status in the course of the employment relationship, a clear violation of the Immigration Reform and Control Act by the employer. **Immigration status disclosure is almost always unnecessary and objectionable under normal rules of discovery; it may needlessly subject injured workers to deportation, and it implicates attorneys' duties fairly to represent their clients.**

Courts have issued numerous protective orders across the country - before and after *Hoffman Plastic* - against unnecessary and irrelevant litigation discovery into workers' immigration status. Cases also hold that threats to turn a worker into immigration authorities are unlawful retaliation under law. And it is the policy of the Bureau of Immigration and Customs Enforcement (BICE - formerly INS) to look with disfavor on an employer's request to get involved in labor disputes. And employers may expose themselves to scrutiny under the Immigration Reform and Control Act for *knowingly* hiring an undocumented worker, or for *unlawful reverification* of status if they suddenly show interest in or knowledge of a worker's immigration status after s/he has been on the job.

As shown by litigation following Supreme Court's opinion in *Hoffman Plastic*, most courts understand that in order to have a credible immigration policy, immigrant workers' labor rights must be protected. Attorneys representing immigrants should challenge inquiries regarding immigration status as not a proper topic for discovery in litigation.

Together with other local and national organizations, the NELP Immigrant Worker Project submitted briefs in *Hoffman* itself, in several post-*Hoffman* cases, and in a successful petition before the Interamerican Court of Human Rights. NELP is available to provide support to attorneys confronting these issues. Contact Rebecca Smith (360) 534-9160 or [rsmith@nelp.org](mailto:rsmith@nelp.org); Amy Sugimori (212) 285-3025 ext 102 or [asugimori@nelp.org](mailto:asugimori@nelp.org); or Catherine Ruckelshaus (212) 285-3025 ext 107 or [cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org).

# The Living Wage Movement Comes of Age

by Tom Stephens, Of Counsel Staff Attorney

The National Lawyers Guild Maurice and Jane Sugar Law Center for Economic and Social Justice

With local Living Wage Ordinances passed in over 100 communities nationwide, and campaigns to pass such ordinances active in approximately 75 others, this grassroots movement advocating economic justice for low-wage workers has reached a new and exciting stage in its development.

In 1994 an effective alliance in Baltimore between labor (led by AFSCME) and religious leaders (BUILD) launched a successful campaign for a local law requiring city service contractors to pay a living wage. Strong community, labor and religious coalitions have subsequently fought for and won similar ordinances in cities such as Detroit, St. Louis, Boston, Los Angeles, Tucson, San Jose, Portland, Milwaukee, Minneapolis and Oakland.

Living wage campaigns seek to pass local ordinances requiring private businesses that benefit from public money to pay their workers enough to support their families. Commonly, the ordinances cover employers who hold large city or county service contracts or receive substantial financial assistance from a municipality in the form of grants, loans, bond financing, tax abatements or other economic development subsidies. Many campaigns have defined the living wage as equivalent to the poverty line for a family of four, with some newer campaigns, for example in Santa Fe, New Mexico, applying the living wage requirement to virtually all employees in a community, not just those of municipal contractors and grantees.

The last decade of experience with building local living wage coalitions and passing local ordinances in community after community, in addition to broadly and successfully raising consciousness and spirit among the millions of low-wage workers who most need political support and an economic raise, has yielded several very important lessons.

→ The model of organized labor working together in coalitions with community, religious and civil rights activist groups holds tremendous potential for transforming political power relations and achieving a significant measure of economic justice;

→ The idea that everyone who works full time should receive sufficient income to keep their family out of poverty is one whose time has come. Moreover, the concept of jobs that pay *living wages* has become a widely referenced phrase, and an accepted basis for evaluating policies regarding economic development, trade and corporate responsibility;

→ The idea behind traditional local living wage campaigns is simple: Public dollars should not be subsidizing poverty-wage work. When employers pay their workers less than a living wage, taxpayers end up footing a double bill: the initial contract or subsidy, as well as the food stamps, emergency medical care, housing and other social services that low-wage workers and their families need, in order to support themselves even minimally; and

→ Opponents of the Living Wage Movement invariably make essentially the same economic argument. They claim that higher minimum wages in general, and specifically Living Wage laws, lead to job loss, economic devastation, and mass business migration. But highly respected economists from across the political spectrum are finding this contention untrue in practice. Empirical economic research suggests that increases in the federal minimum wage - even those adopted during recessions, as in 1990 and 1991 - have resulted in no discernible job losses.

## Stop the Race to the Bottom by Raising the Floor

Opponents of corporate-managed *free trade* agreements have often decried the *race to the bottom* of labor, environmental, and other social standards fostered by such policies. The movement to require payment of *living wages* is a critical and practical answer to this widespread global problem. Forces can be rallied, organized, and effectively directed toward a universal living wage standard, which could go a long way toward eliminating the unfair competitive pressures that generate the race to the bottom. To act effectively, labor and community advocates of living wages should consider and address the following tactical and strategic issues.

## Enforcement and Implementation

For the credibility of the *Living Wage Movement*, for the labor movement's use of this issue to help low-wage workers join unions, and especially for the individual workers whom the Living Wage benefits, it is vital that existing local ordinances are enforced and the workers actually receive the wages to which they are entitled under law. There is evidence of contractor evasion of Living Wage requirements in some communities. We need a coordinated living wage enforcement campaign.

## Universal Living Wage Laws

The time-tested, bottom-up strategy of passing local Living Wage Ordinances in many individual communities has been effective. This grassroots strategy may be useful for legislating broader living wage requirements.

## Organized Labor as a Social Movement

The *Living Wage Movement* mobilizes working people outside traditionally defined bargaining units. The focus of traditional local Living Wage Coalitions on municipal contractors and grantees created a natural alliance with public employee unions' who are concerned about privatization, and organizing unorganized, temporary and service sector workers. To the extent that labor and community coalitions voice the demand for living wages as a key requirement for supporting economic development, trade, health care and other socio-economic policies, such a coalition holds promise for generating real political power that counters the corporate *free trade* paradigm, with its depressing *race to the bottom*.

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## Raising the Living Wage

The federal government's official determination of how much income qualifies people as living in *poverty* is completely unrealistic, based on outmoded historical assumptions and totally arbitrary methodology. Therefore it is probably about 100% or more too low, as a measure of how much income is really needed to allow families to live with a reasonable amount of dignity and participate fully and fairly in a democratic society.

## Sugar Law Center Can Provide Technical Assistance to Grassroots Living Wage Campaigns

The Sugar Law Center can provide technical assistance to the *Living Wage Movement* and its diverse grassroots constituencies. The staff and partner organizations of the National Lawyers Guild Maurice and Jane Sugar Law Center for Economic and Social Justice are well situated and prepared to help with this broad social, political, economic and legal organizing and mobilization.

We are committed to the following general activities, and to working with labor unions and community and labor coalitions to make *living wages* the universally recognized alternative to the failed corporate *free trade* policies of the last several decades.

⇒ Filing and prosecuting individual and class action living wage enforcement lawsuits in diverse communities where local Living Wage ordinances and policies have already been passed;

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## Support and Volunteers Needed for Workers' Rights Center - Chicago

The Chicago-based National Interfaith Committee for Worker Justice (NICWJ) is a non-profit group that promotes living wages, improved employment conditions, fair treatment and benefits for workers. For several years the NICWJ has operated a Workers' Rights Center to assist workers in addressing workplace concerns, such as filing wage claims, EEOC claims of discrimination, as well as issues related to union organizing campaigns. The NICWJ and its Workers' Rights Center are working to expand its representation of employees through a legal clinic. Currently, the Center schedules legal clinic evenings as needed and as the schedules of volunteer attorneys permit. **The Center is seeking to expand the clinic, providing more regular legal assistance to workers and needs additional attorneys to do so.** Contact:

Alexia Kulwicz, LCC and NLG L&EC member, (708) 569-6662 or [akulwicz@local150.org](mailto:akulwicz@local150.org)

or

Jose Oliva at the NICWJ at (773) 728-8400

**Thanks for your help!**

⇒ Working with local Living Wage Coalitions organizing to pass Living Wage ordinances in additional communities, to provide technical, legal and political assistance regarding effective enforcement and implementation language;

⇒ Addressing the attempted exclusion of workers covered by union collective bargaining agreements from the requirements of Living Wage laws;

⇒ Applying the Living Wage requirement to employees of companies that receive municipal economic development assistance, their lessees and subcontractors. This currently appears to be an area rife with evasion;

⇒ Defending local Living Wage Ordinances from attacks by the Chamber of Commerce and their allies, in the form of state pre-emption statutes and local repeal campaigns. The available peer-reviewed economic evidence simply does not support their ideologically based anti-Living Wage arguments, and they should not be winning any arguments with open-minded and responsible public officials;

⇒ Connecting the demand for Living Wages to the concerns of the Global Justice Movement about corporate-directed *free trade* policies and agreements, and to the closely related concerns of the labor movement about the rights of labor to organize and broader goals directed at achieving economic and political power. One of the Living Wage Movement's leading economists has eloquently argued that advancing a sorely-needed egalitarian economic policy agenda will never be sustainable or meaningful in the real world, unless it is combined with a forceful campaign to require that employers and government regulators respect workers' fundamental rights to organize;

⇒ Expanding Living Wage Campaigns beyond the local to statewide, national and even into international policy-making arenas; and

⇒ Developing the Living Wage community and labor coalition model, with broad representation from civic, religious, civil rights and other community groups, into an incubator for organized labor as a social movement in the 21st century.

## NLG Members Observe El Salvador Election

Some 27 members of the NLG headed by Brad Seligman went to El Salvador to monitor the elections there on March 21, 2004. Elections were observed in three different voting areas, each of which was some 2 miles outside San Salvador. A full report will be forthcoming. Preliminary results of the election: ARENA 57.7%, FLMN 35.6%, CDU/PDC Coalition 3.9%, and PCN 2.7%. These results contrast with a *statistical tie* projected in December 2003 and January 2004 polls. Interference by the US, including public statements by Roger Noriega, Western Hemisphere Assistant Secretary of State, that sanctions and prohibitions on remittances would result if an FLMN president was elected, undoubtedly had an impact on the election results.

submitted by Emily Maloney

## Farmworker Wage and Hour Victory

Bob Willis, NLG L&EC member, writes, "If this significant victory for farmworkers withstands a likely challenge on appeal under the FLSA's Portal to Portal Act provisions as interpreted in *Vega v. Trevino*, 36 F.3d 417 (5th Cir. 1994), it will likely have a ripple effect for thousands of farmworkers all over the country. Even if the favorable judgment was based upon unique provisions of California wage and hour law which do not contain the type of Portal to Portal Act work time exclusions contained in 29 USC section 254(a), it will still impact the wages paid to thousands of agricultural workers in California, a state that has more migrant agricultural workers and the largest agricultural industry in the US."

## Farmworkers to be Paid for Travel Time

*The article below is taken from an AP story published March 24, 2004, in The Desert Sun.*

In a major victory for farm workers, a federal judge has ruled that one of California's largest vegetable producers must reimburse laborers for thousands of hours spent traveling on company vans to and from the crops they picked.

D'Arrigo Brothers Co. could owe \$13 million or more in back wages and penalties to more than 3,000 laborers, according to a judgment last week by U.S. District Judge Jeremy Fogel of San Jose. Fogel will determine exactly how much money the Salinas-based agricultural giant owes after April 5, the deadline for both sides to submit time sheets and other data.

The reimbursement could become the biggest settlement of its kind since the California Supreme Court ruled in 2000 that workers must be paid for compulsory travel time. Castroville-based Sea Mist Farms, the nation's largest artichoke producer, was ordered last year to pay 37 workers more than \$181,000 in travel time from 1997 to 2001.

"This decision says, 'If you're going to treat people in a controlling manner and take away their choices, you'll have to pay them for their time,' " said Paul Strauss, a partner at Chicago-based Miner Barnhill & Galland, which represented D'Arrigo workers. "If you treat them as responsible adults who can decide how to run their lives themselves, you don't have to pay them for their time away from work."

The class-action case, whose members were primarily Mexican immigrants who earned between \$11,000 and \$16,000 per year, hinged on whether D'Arrigo compensated workers for half-hour commutes in company vans between a Salinas parking lot and farms throughout the Salinas valley.

Workers had to arrive at the parking lot by 6 a.m., then take vans to fields 10 or 15 miles away, resulting in 25 to 50 minutes each way when they were under D'Arrigo's watch, but not getting paid. Rural workers who lived near the fields questioned why they couldn't simply arrive for work in the fields and park on the side of the road.

More than 3,000 members of the class-action suit worked for D'Arrigo from 1996 to 2000, including hundreds who most likely returned to Mexico. Lawyers are still trying to locate some of the original plaintiffs.

## NLG L&EC Breakfast at LCC to feature Guillermo Ferriol & Debra Evenson

This year's breakfast hosted by the NLG Labor & Employment Committee at the AFL-CIO Lawyers' Coordinating Committee conference features two very special speakers discussing labor relations and Cuban unions.

**Guillermo Ferriol**, Vice President of the Cuban Society of Labor Rights and Social Security of the National Union of Cuban Jurists, and **Debra Evenson**, NLG attorney and winner of a MacArthur genius grant for her work on the legal profession in Cuba.

**Debra Evenson** has been charting Communist-led Cuba's efforts to build a Soviet-modeled socialist legal system and then, after the Soviet Union fell, to transform that system to reflect Cuba's new and sometimes awkward place in a world of globalized markets. Evenson has written extensively about the Cuba legal system. Her work is reported as a personal journey as well. Evenson, long sympathetic to socialist goals, has, like many Cubans, had to struggle to balance her ideals with some of the harsh realities of life in Cuba. She has come away hopeful, conflicted and with a reputation for straight talk and honest criticism that has won her respect both on the island and at home. Termed a "critical supporter of the Cuban revolution," she says she sees one of the world's last Communist societies not as a model of egalitarian success or as a repressive failure, but as something more complicated, as rich and complex as the island's own history.

### The program will focus on some of these questions:

- How do assumptions about labor-management relations differ in socialist and capitalist economies?
- What is the role of Cuba's labor movement and organized workers in formulating law and policy?
- How have Cuban unions' roles changed as a result of reforms following the collapse of the socialist bloc?
- How does the blockade imposed by the U.S. affect Cuban working people?
- What are the prospects for normalization of relations between our two countries?
- Do labor lawyers have a role in building transnational solidarity in a global economy?

### New Handbook Planned on Strikes and Lockouts Comments Requested before Publication

Robert Schwartz, author of **The Legal Rights of Union Stewards**, reports he is working on a new handbook tentatively titled: *Hitting The Bricks - A Union Guide to the Law of Strikes and Lockouts under the National Labor Relations Act* to be published by Work Rights Press. He has a 200-page draft (spiral bound) that he will mail to NLG L&EC committee members who have time to read it and make comments and suggestions. He can be reached at rms25@aol.com.

“Since 1996, working families have developed innovative strategies to challenge Big Business’ huge cash advantage and bring attention back to such issues as good jobs, retirement security, health care and corporate accountability.

### People-Powered Politics

“The heart and soul of that strategy is growth of the nation’s strongest grassroots network of political activists. In the 1996, 1998, 2000 and 2002 election cycles, the AFL-CIO committed voluntary contributions by affiliates to increase voter registration, education and mobilization. None of the money went to political candidates. The difference was noticeable. More than 4.8 percent of members of union households added their names to the voter rolls between 1992 and 2000. Those new voters meant that union households represented 26 percent of the vote in 2000, up from 19 percent in 1992.

“During 2000 union members called more than 8 million other union members to talk about the issues that matter to working people. More than 1,000 field coordinators ran programs on . . . working family issues and get-out-the-vote efforts.

“By the 2002 off-year elections, tens of thousands of union volunteers and more than 4,000 local union coordinators mobilized to overcome the Big Business advantage over working families. In all, the coordinators and volunteers distributed more than 17 million worksite fliers, made 5 million phone calls to union households, sent 15 million pieces of mail to union family voters and knocked on more than 500,000 doors.

### What’s at Stake in 2004

“There is a great deal at stake for working people in the 2004 elections. During his first term in office, President George W. Bush and the Republican-led Congress carried on a calculated effort to dismantle workers’ rights.

“They attacked overtime pay, stripped tens of thousands of federal workers of collective bargaining rights, passed huge tax breaks for corporations and the wealthy, dismantled job safety laws and developed trade agreements destroying US jobs.

“The policies of the Bush administration and its Congressional allies have perpetuated the nation’s recession, yielding the highest unemployment rate since 1994. More than 3.1 million jobs were lost since Bush took office, the largest loss under any president since Herbert Hoover presided over the Great Depression.

“At the center of the Bush administration’s failed economic policies: trillions of dollars in three tax cuts that primarily benefitted the extremely wealthy. When Bush signed his first \$1.6 trillion tax cut, he promised it would boost the nation’s economy. In fact, the economy has worsened: By June 2003, unemployment stood at 6.4 percent in the 35th straight month of job losses.

“Bush pushed aside the needs of working families when he raided Social Security to pay for his first tax cut for the rich and when he diverted federal monies from investments in infrastructure, social services and education that benefit the country for his second tax break for the wealthy.

“In May 2003, Bush signed another tax cut bill showering most of the \$330 billion on the wealthy. The tax cuts did little to create much-needed jobs—but went a long way toward swelling the nation’s multi-trillion dollar deficit.

felt such a strong sense that the torch of democracy and human rights was being passed from one generation to another, from people who fought for freedom long before I was born.

When I left that week, it appeared that our work had paid off. The Courts and election officials in Florida (other than certain Republican appointees) were convinced that the election result was deeply flawed and would need to be corrected. None of us could have predicted that the process, which was working as it should, under the rule of law, would be hijacked by the Supreme Court.

Much of my best and most rewarding work has been done through the auspices of the NLG. As a law student in the early ‘90’s the NLG provided support and funding for my student chapter to travel from Cleveland to Miami (what is it about the NLG and Miami?) to assist Haitian refugees complete asylum applications. On that trip I connected with a man my own age who had fled Haiti after Ton Ton Macoutes shot up his church and informed the congregation they would return to hang a burning tire around his neck, all because he had done what every young radical dreams, he had literally manned the barricades in favor of democracy and to keep the opposition forces out of his neighborhood during the first *coup d’etat* against President Aristide. The experience put my own difficulties as a struggling law student into much clearer perspective. A few years later I was asked by NLG to volunteer as an observer and counsel for pro-choice counter-demonstrators determined to ensure safe and legal access to abortion clinics during one of Operation Rescue’s vicious summer assaults. Again, I felt like a foot-soldier for human rights, though one armed only with a notepad and a little knowledge.

Through the NLG and the L&EC, lawyers have been there, ready to throw themselves into the actual work of defending human rights. And on those few occasions when I heard the NLG’s call, and have been able to answer in the affirmative, I have been rewarded beyond all measure.

In 2000, I was willing to go, but not able. As a young associate in a small, Idaho labor law firm, last minute airfare to Miami was simply out of the question. A quick call resulted in a commitment from Kazan, McClain, Abrams, Fernandez, Lyons & Farris, a Guild & LCC firm to cover my travel costs. My employer at the time (now my partner), L&EC member Alan Herzfeld graciously promised to cover my workload and gave me the time to go. A few more calls yielded a free place to sleep, a cheap rental car, and several dinner invitations from L&EC members and other members of the movement in the Miami-Dade area.

Like most labor lawyers, I believe our day to day work makes the world a better place. **And when the call or e-mail beckons you to do something more beyond your dedicated practice, I urge you to respond. What’s at stake in the 2004 election is monumental.**

# **L&EC Meetings & Stuff!**

## **AFL-CIO LCC - New York City - May 2004**

**Tuesday April 27 - 11:30-1 pm - L&EC Steering Committee MEETING**  
(lunch - meet at the Guild table near LCC registration at 11:15 am)

**Wednesday April 28 - 7-8:15 am - Annual Breakfast**

## **Cuban Unions and Labor Law**

Guillermo Ferriol will discuss Cuban unions and labor law and

Debra Evenson will discuss her comprehensive study of Cuban unions and labor relations

Guillermo Ferriol, Vice President, Cuban Society of Labor Rights and  
Social Security of the National Union of Cuban Jurists

Debra Evenson, Attorney & Professor of Law

**All are welcome to both events**

**STOP BY THE NLG L&EC TABLE FOR MORE INFO**

### **National Lawyers Guild**

**Labor & Employment Committee**

c/o Kazan McClain Abrams Fernandez Lyons & Farris

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