

CRLA

in the News

April, 2005

*"...with my lamp I search for those who fall:/I soothe and close their wounds:
these are the chores of the poet/of the aviator and of the stonecutter:
...And so, if when I attack what I hate,/ or when I sing to those I love,/*
.... I'll follow the letter of my law... and in my steadfast duty to America!
...I have a pact of love with beauty/ I have a pact of blood with my people."

~ Song of Protest, Pablo Neruda

Dear Friend of CRLA:

This is the fifth issue of "CRLA In the News". As in the past, we present examples of our daily work as reported in newspaper stories published over the last 12 months. The stories reveal human poverty and the impact of legal services on individuals and families as they survive what poverty brings them daily. Today, war continues dominating the news. Our country continues not only waging a costly war, but then continues the rattling of sabers with ominous possibilities. The poet Neruda suggested that, as Americans, we go about the job of healing and closing wounds not creating them. We must all see this as a critical obligation, eliminating in American society, the injustices served on the working poor and minority communities of our country. We must see ourselves as social justice healers. The justice stories we present become lost in the bigger war stories of death and destruction. Also, rarely does the media cover stories critical of government policies that create or maintain poverty conditions. On the contrary, the news we read about relate to the Presidents or the Governors efforts to destroy the existing social safety nets that provide public benefits, including social security. In turn, we must continue to wage our war on poverty.

CRLA's statewide priorities-- rural education, housing, labor, civil rights, and family security & public benefits- direct CRLA legal resources on the ground. They drive the advocacy highlighted in these stories. Civil rights advocacy meant the maintenance of a polling site in the town of Pajaro that would have disenfranchised voters by closing the church polling site in a Latino neighborhood. In Madera, the only hospital in that town will now provide non-emergency health services to Medi-Cal patients. In northern California (Napa County), increasing affordable housing will come from a lawsuit settlement. The site at issue will allow the building of 422 homes and half in the low and very low income ranges. More than 200 low-income farm worker and other families will access good housing. In keeping with tradition, CRLA continued aggressively defending worker rights in agriculture and the dairy industry. Protecting the health of such workers is reflected in the advocacy that led to the new ban on hand weeding. This issue also focuses on migrancy and sharecropping, two conditions that CRLA farm worker projects continue to address affirmatively.

As reported over the last two years, CRLA experienced an unprecedented and very vigorous audit by the Federal government's Office of Inspector General. The 30-month ordeal was costly in dollars and lost services. In this issue we cover the Congressional hearing that took place March 2004 that brought the saga to its successful conclusion. Pertinent to the story is the fact that the Congressional inquiry was initiated by the Dairy industry and we present a magazine article that suggests why the industry wants to remain unchallenged—the horrendous conditions of work and the industry-wide violation of existing worker protections such as minimum wage. Dairy is an industry that feels at liberty to reward hard work with a full scale denial of basic worker rights, illegalities comparable to perhaps one other state industry—the garment industry. One CRLA dairy case settled in early 2005 for \$360,000 in worker compensation for overtime and other benefits.

Thank you for joining us in this pursuit of rural justice. Your generosity makes you an equal partner in the work. *Adelante hacia la luz. Forward toward light.*

Jose R. Padilla,
CRLA State Director

~ *39 Years of Advocacy* ~

Register-Pajaronian

WATSONVILLE, CA ¥ OCTOBER 20, 2004

Polling site is lost, regained in Pajaro

Change by elections office follows letter from local attorney

AMANDA SCHOENBERG
OF THE REGISTER-PAJARONIAN

PAJARO - After complaints from California Rural Legal Assistance on Monday, the Monterey County Elections Office quickly changed a decision that would have left hundreds of Pajaro voters out of luck on Nov. 2.

When Pajaro residents in three precincts received their ballot information this year, they were informed they would be voting at the Aromas School Library on 365 Vega St., about eight miles from Pajaro, not at their former polling site, Our Lady of Assumption Church on Salinas Road.

By the end of the day Monday, however, the Elections Office reinstated the church polling site, after CRLA attorney Luis Alejo questioned the lack of an accessible Pajaro site in a letter to Registrar of Voters Tony Anchundo.

In the letter, Alejo alleged that the Monterey County office was creating an artificial barrier for many voters in the community of Pajaro and will result in their voting disenfranchisement.

Alejo also claimed that Monterey County, one of five counties in California subject to pre-clearance by the U.S. Department of Justice before they change voting locations, may not have received the required pre-clearance for the new site.

The Department of Justice press office did not return a phone call from the Register-Pajaronian on Tuesday, but Anchundo said the new site had been cleared in 2003 and voters had used the site for the recall election.

The Assumption Church polling site was eliminated last year after the church complained about a particular poll worker, Anchundo said. But he recognized that it was a better location for local residents

and successfully asked the church to allow the county to use the site again this year.

The CRLA was absolutely right that that polling place was the best for that community, Anchundo said. We would never intentionally move something to disenfranchise people.

He acknowledged that had the CRLA not brought the poll site to his attention it might have been missed, but said he had absolutely wanted to return to the original church site.

We are human and sometimes make errors, he said. Fortunately, we have time.

Elections officials will immediately mail postcards advising residents of the polling site change and will post signs at the Aromas School Library, though 100 of the 351 registered voters within the area in question have already registered for absentee ballots, Anchundo said.

Adela Marsh, 83, lives on Cayetano Street, about two blocks from the church. She has voted in every election since 1949, but with no car and no family nearby, she was concerned about getting to the Aromas site.

I was very nervous, Marsh said. Now, it's going to be OK.

Mary Ellen and Robert Rodriguez, both 67, who live with two voting-age granddaughters and their son on Cayetano Street, have resided in Pajaro for 46 years.

Last year, they made the trek to Aromas to vote in the recall election, but were concerned this year about some of the less mobile locals who would not have been able to make the trip.

There's no bus that goes out there, Robert Rodriguez said.

It's wonderful. I hope they advertise it, Mary Ellen Rodriguez said about the change.

Mary Ellen Rodriguez would not consider voting by absentee ballot, which



Adela Marsh, 83, talks about the location of polling sites in Pajaro on Tuesday at her residence in Pajaro.

TARMO HANNULA, REGISTER-PAJARONIAN

would have been another option for locals hesitant to go to Aromas.

I always think of the mail not getting there, she said. I like to make our votes count.

In 2003, Monterey County dropped from 190 to 91 polling sites, partly because of budget constraints. But this year that number rose to 120, Anchundo said.

Although Bob Holprob, assistant at the Monterey Democrats headquarters, said the office had received 15-20 phone calls yesterday morning from people who had not received absentee ballot information, Anchundo said he had been assured by the Post Office that all Monterey absentee ballots would be delivered by Tuesday at the latest.

The office has already received 20,000 absentee ballots back, from about 73,000 expected countywide. ■

dollars & sense

Hidden Horrors

Continued

the deaths of two workers forced the state to toughen its safety inspections of the dairy industry in the Central Valley. On February 22, 2001, Enrique Araiza, 29, and Jose Alatorre, 24, drowned in cow manure at the bottom of a sump pump at the Aguiar-Faria & Sons dairy in Gustine, Merced County. (Sump pumps move the water that flushes waste out of dairy barns into manure lagoons.)

Araiza was overcome by fumes when he went down into the 30-foot pit to try to fix a stoppage. Standing knee-deep in manure, he fell face-down after breathing in methane gas emitted by the liquid waste. His co-worker Alatorre went after Araiza to try to rescue him. Both men died.

Aguiar-Faria dairy manager and part-owner Patrick J. Faria, 52, and foreman Alcino Sousa Nunes, 45, were accused of causing the deaths, and each faced two counts of involuntary manslaughter, plus charges of health and safety violations. They were set to face trial in April 2004, but early that month the manslaughter charges against Nunes were dropped, and he pled no contest to a labor code violation. He faces three years probation. He will serve no jail time, nor will he have to pay any restitution.

Meanwhile, co-defendant Faria's case has not been resolved. His jury trial was moved to June 22, then September 9. He faces up to four years in prison if convicted.

On August 21, 2001, the state Occupational Safety and Health Administration (Cal OSHA) fined the Aguiar-Faria dairy \$166,650, which the dairy appealed. The agency is still processing that appeal, three years later. To date, the dairy has paid no penalties for the incident or restitution to the workers' families.

After the high-profile 2001 deaths, there was a move to enforce safety [in] the dairy industry, and we went in the dairies unannounced, to conduct inspections, says Cal OSHA spokesman Dean Fryer. That year, the agency inspected 80 dairies and levied \$708,930 in fines for 291 safety violations.

The 2001 safety sweep irked some dairy owners, but with Cal OSHA's outreach to industry associations, dairy owners came around, realizing that this was an important issue, says Fryer.

The realization did not last. A year and a half after the Aguiar-Faria incident, an employee of Turlock Irrigation Construction died in much the same way as Araiza and Alatorre. On August 27, 2002, Sergio Ortiz was trying to repair a flow gate near the base of a 12-foot-deep manure pit at the Rego Dairy in Gustine when he was overcome by methane gas. Cal OSHA officials say Ortiz did not have safety equipment or protective gear and was not properly trained for the job. The

agency fined Turlock Irrigation Construction \$116,500. The company is appealing the fine.

Despite continued violations, by last year the number of Cal OSHA safety inspections at dairies plummeted to eight, resulting in a mere \$36,050 in fines. This year, there have been no inspections. Explains Fryer, We've stepped back to give the industry a chance to come into compliance and take steps on their own to improve their safety programs.

By contrast, Cal OSHA has, since 1994, conducted a serious program of unannounced inspections targeting the garment industry, which, like the dairy industry, has a history of labor code violations and large scale employment of Latin American immigrants. In 2001, Cal OSHA inspected 1,180 garment manufacturers and issued 690 citations. Penalties assessed came to \$3,001,552. The numbers for 2002 and 2003 are similar.

Cal OSHA has maintained consistent pressure on the garment industry for the past decade. But after one year of random focused inspections in the dairy industry, somebody called off the dogs. Did Cal OSHA act on its own, or under the pressure of strong lobbying and angry phone calls by the dairy industry? Why does it seem that health, safety, and wage problems among garment workers draw the attention of the agency but workers with similar, and often worse, problems in the dairy industry are virtually ignored?

To hear some representatives of the dairy industry tell it, there's no problem at all and if there is, it's the worker's own fault. Dairy representatives like Michael Marsh, CEO of Western United Dairymen, an industry association, deny that there are wage, housing, or health and safety problems in the dairy industry. Marsh claims that even if worker housing were substandard, the employee could negotiate with an employer a different wage that would allow them to live someplace else if they chose. To the suggestion that some workers might be reluctant to negotiate because they might be undocumented immigrants, Marsh replied, Did you talk to any illegals? You know that's against the law. No one is allowed to hire undocumented people.

Workers Stand Up

Even though they stand to lose their jobs and their housing, and might even be deported, dairy workers are beginning to fight back and sometimes win.

On April 15, dairy owners Anthony and Renee Silveira reached a \$150,000 settlement with a group of their workers over substandard housing and wage and other labor violations. San Francisco attorney Mark Talamantes filed the complaint on behalf of Gerardo Padilla and about a dozen other workers at the Silveiras dairy. The suit stated that Padilla worked as a milker seven days a week, 10 hours a day, getting only two days off per month. None of the workers, according to

the suit, were allowed meal breaks or rest periods, nor were they paid overtime. According to records of an inspection by the state Department of Housing and Community Development, buildings used to house Padilla and the other workers featured, among other things, exposed electrical wires, holes in the walls and floors, rotted wood, leaky plumbing, and raw sewage draining into the yard.

Part of the settlement, says Talamantes, includes fixing all the housing within the next 18 months and making it habitable. The settlement is a huge victory, says Talamantes. It will send a message to the surrounding dairies that workers can get representation and can recover their wages [and] can make these dairies be responsible for the housing.

Talamantes was successful in another dispute over dairy-worker housing last year. Charles and Tony Spaletta, of Petaluma, agreed to pay \$235,000 in a settlement with eight former herders and dairy production workers at the Cypress Lane Ranch.

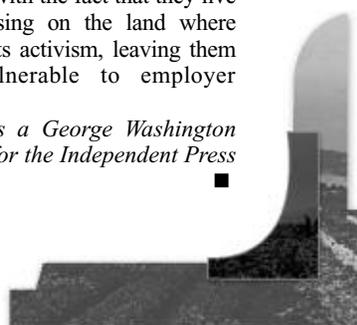
The workers claimed the housing the Spalettas provided was filthy and rundown. The housing was deplorable, says Talamantes. There were mushrooms growing on the carpets, holes in the roof. When they went to the employer and asked him to fix it they were fired.

Says Talamantes, For so long these dairies have been able to get a way with exploiting their workers and treating them like animals.

I think that [in] all the cases I've seen, there's consistently a problem with underpaying workers, providing them with inadequate housing, and forcing them to work overtime without pay and to work in unsafe conditions, says CRLA's Saul Garcia in Modesto. There's an attitude that workers are easily disposable and easily replaced. To me, that's the common thread there's this perception that these workers are throwaways. We see time and time again if a worker is injured, he gets fired, if he complains about his wages he gets fired. The root of the problem is that there is simply a lack of respect for the workers.

For now, the efforts of dairy workers and their supporters remain small and reactive. Community workers at CRLA provide informational pamphlets regarding workers' rights in the dairy industry, but CRLA is not involved in any organizing. For many California dairy workers, their immigration status, combined with the fact that they live in company housing on the land where they work, inhibits activism, leaving them isolated and vulnerable to employer retribution.

R.M. Arrieta is a George Washington Williams Fellow for the Independent Press Association. ■





House LSC Oversight Committee Holds Hearing on CRLA and Client Co-Pay

On Wednesday, March 31, the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee held a legal services oversight hearing. The uncharacteristically low-key hearing focused narrowly on several issues raised by the recent Office of Inspector General (OIG) report on California Rural Legal Assistance (CRLA) and on the merits of a possible system of co-payments by LSC eligible clients. Subcommittee Chair Chris Cannon (R-Utah), Ranking Member Mel Watt (D-NC) and subcommittee member William Delahunt (D-MA) participated.

The hearing featured three witnesses for the majority: LSC President Helaine Barnett, CRLA Executive Director Jose Padilla, and Harvard Law School's Hale and Dorr Legal Services Center Director Jeanne Charn. Former LSC President John McKay, now U.S. Attorney for Washington State, had been invited for the minority, but the Department of Justice (DOJ) refused to allow McKay to appear. Both Reps. Watt and Cannon commented on the DOJ refusal. Rep. Watt indicated he was disappointed McKay was not permitted to appear because both Barnett and LSC Board Chair Frank Strickland, who attended the hearing but was not asked to testify, were new and might not have as broad a perspective on the issues as McKay. Chairman Cannon remarked on the Bush Administration's confusion about the Congress prerogatives to call witnesses to testify.



Before the witnesses began, Rep. Watt noted he believed it was inappropriate and counterproductive for the subcommittee to call Jose Padilla to testify, because CRLA is the subject of an ongoing investigation initiated by the OIG and referred to LSC management that has not been resolved by LSC. He warned that the subcommittee should tread lightly to unduly influencing the outcome of the CRLA investigation. He also stated that he was a firm opponent of client co-payments for legal services and feared that such a system



CRLA Director Jose Padilla testifies at the House LSC Oversight Committee hearing before Congressmen Chris Cannon (R-Utah) and Mel Watt (D-N. Carolina)

CRIA



House LSC Oversight Committee...

Continued

would lead to the end of comprehensive legal services delivery system.

Jose Padilla spoke eloquently about the history of CRLA's work on behalf of low-income Californians and, for the remainder of his testimony addressed the issues raised by the OIG's report. He spoke about CRLA's efforts to cooperate with the OIG during its 30-month long audit of the program, estimating that CRLA had expended 4479 staff hours of audit-related work, at a cost of \$113,091. He noted that despite this extensive review, the OIG found no financial irregularities, no violation of LSC rules that required any penalty or LSC intervention, no improper transfers of LSC funds between CRLA and the CRLA Foundation, which were found to be independent entities. Padilla also pointed out that the OIG found that CRLA's participation in 17200 litigation-complex cases that resulted in the recovery of thousands of dollars of unpaid wages for its clients and others — was a proper use of program resources.

Padilla acknowledged that the OIG did make several findings relating to the program integrity under Part 1610 of the LSC regulations. He stated that where CRLA agreed with the OIG findings, it had taken action to change its policies and practices to ensure compliance in the future. Where there is disagreement with the OIG's conclusion that CRLA had provided an improper subsidy to the CRLA Foundation by failing to collect \$511 (out of \$18 million in expensed during the period covered by the audit) in interest on late rental payments. He also objected to the OIG's find-

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ings that CRLA should not have permitted one of its senior staff members to work a small percentage of her time for the CRLA Foundation and that it should not permit senior staff to participate when CRLA counsels cases with the CRLA Foundation. In addition, he challenged the OIG's conclusion that CRLA had failed to comply with the client identification and statement of facts requirements for individuals who had consulted with CRLA on the issues in the 17200 cases, but who had decided not to become plaintiffs in the actions.

Chairman Cannon first questioned Padilla about a full-time staff person who also worked for the CRLA Foundation. Padilla responded that the person had left CRLA 3 or 4 years ago, and that she had

done nonlegal volunteer work for the CRLA Foundation. When asked, Padilla stated the CRLA policy was clear that employees were not permitted to use any CRLA resources to support outside volunteer activities.

Rep. Delahunt then asked, Why is Mr. Padilla here? He went on to say that I'm almost embarrassed that you are here because the discussion was focusing on such discrete issues such as shared office space when there were many more important issues that were ripe for oversight when considering the need to ensure equal access to justice. He also noted that there was an ongoing administrative process at LSC to consider the issues that were the issues that were the subject of the hearing. He intimated that there were political motives for holding the hearing.

He then asked Padilla to repeat the amount of interest that was at issue. When Padilla stated that the amount was only \$511, Rep. Delahunt asked how much his plane ticket cost to attend the hearing, and Padilla replied that the round-trip fare cost over \$1000.

At the close of the hearing Padilla expressed his thanks to Chairman Cannon for his support of the AgJobs bill and the Dream Act which would provide higher educational opportunities for undocumented children. Chairman Cannon thanked Padilla and indicated that he believed it was important to open opportunities for people to move from poverty to self-sufficiency. He also said that he thought there was a great deal of support for LSC in Congress, and that for the first time there was close to unanimity in support in the program.

CRLA



CRLA Events 2005 *Save these dates!*

ANNUAL CRLA, INC. & CRLA FOUNDATION SACRAMENTO COMMUNITY SERVICE AWARDS RECEPTION

Senator Hotel
1121 L Street, Suite 105 • Sacramento, California
Music, Food, Awards & Silent Auction

**MAY 18, 2005
5:30PM TO 8:30PM**

ANNUAL CRLA LOS ANGELES COMMUNITY AWARDS RECEPTION

Hosted by Dolores Leal* & Tomas Olmos*
*Partners of the law firm Allred Maroko & Goldberg
2120 E. Live Oak Drive • Los Angeles, California
Music, Food, Awards & Silent Auction

**JUNE 25, 2005
2:00PM TO 5:00PM**

ANNUAL CRLA SAN FRANCISCO TARDEADA EVENT

Golden Gate Club
135 Fisher Loop, The Presidio • San Francisco, California
Music, Food, Awards & Silent Auction

**OCTOBER 23, 2005
2:00PM TO 6:00PM**

CRLA'S ORANGE COUNTY COMMUNITY SERVICE AWARDS EVENT CRLA'S ANNUAL SAN DIEGO TARDEADA EVENT CRLA'S TEQUIO AWARD EVENT, LOS ANGELES

FALL 2005

For more details & information on any of the above events, please contact RainyDay Ventures (415) 492-8065 or visit CRLA's website at www.crla.org

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- MAKE A STOCK CONTRIBUTION (CONSULT TO YOUR BROKER).
- PURCHASE A SIMON SILVA LIMITED EDITION LITHOGRAPH (VISIT CRLA'S WEBSITE, GO TO STORE).
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