

FARMWORKER JUSTICE FUND

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Farmworker Justice Fund 2004 Report

2004 Report

Farmworker Justice Fund, Inc.

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FARMWORKER JUSTICE FUND

Highlights of the Farmworker Justice Fund's Activities



We are pleased to report on the recent and upcoming activities of the Farmworker Justice Fund, Inc. ("FJF").

We thank our many supporters who make possible our advocacy and education for migrant and seasonal farmworkers. And we welcome readers who may not be familiar with our work.

The challenges are many. Farmworkers continue to face extreme difficulties with respect to wages, working conditions, occupational safety, health, and access to justice.

We are, however, making progress through creative, high-quality advocacy and education. Our efforts are enhanced by our extensive collaboration with farmworker organizations, the Latino community, labor unions, legal advocates, the religious community, civil rights groups, government agencies, public health officials and many others.

What is our mission? In December 2003, the Board of Directors and the Staff met to review our mission, our accomplishments, our vision for the future, and our plans for

achieving our objectives. The Board slightly revised our mission statement to read:

The purpose of the Farmworker Justice Fund is to empower migrant and seasonal farmworkers to improve their wages, working conditions, occupational safety, health, immigration status, and access to justice through litigation, advocacy, public awareness, capacity building, coalition building, and support for union organizing.

Our vision for the future is to achieve high-impact advances for migrant and seasonal farmworkers in our priority areas and to do so through collaboration with farmworkers organizations and others willing to support the cause of farmworker justice.

Since its inception, FJF has collaborated closely with farmworker organizations and advocates throughout the nation to ensure that farmworkers themselves have a voice in the policy debates that affect them. One reflection of that collaboration is the representation on our Board of Directors by the three major farm labor unions in the United States: the Farm Labor Organizing

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Committee, AFL-CIO; Pineros y Campesinos Unidos del Noroeste (PCUN is Oregon's farmworker union); and the United Farmworkers of America, AFL-CIO.

One of our most important collaborations is with the National Council of La Raza. In 1996, FJF became a subsidiary corporation of the National Council of La Raza (NCLR). NCLR is a major Latino civil rights organization. It was established in 1968 to reduce poverty and discrimination and improve opportunities for Hispanic Americans. FJF retains its own Board of Directors, the majority of which is composed of current or former farmworkers or their advocates. NCLR's commitment to farmworkers and to the Farmworker Justice Fund has been enormously helpful on many issues and in many ways. We appreciate very much President Raul Yzaguirre's help, as well as the extensive support provided by his senior staff and many others in that effective organization.

We serve as a national resource that many organizations and individuals draw on. In addition to our expertise, we maintain a substantial collection of information about farmworkers

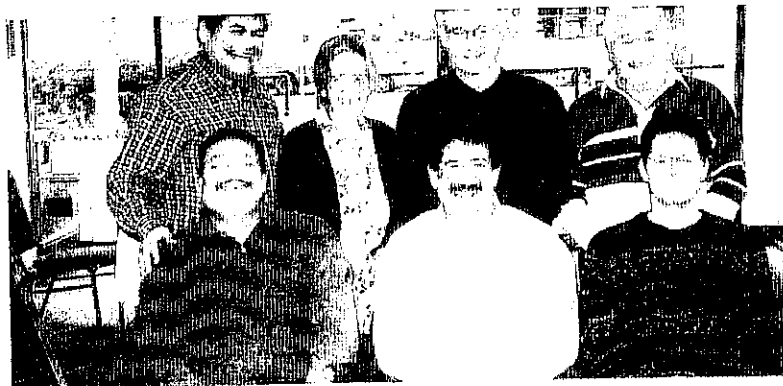
and policy, operate "listserves," post information on our website, www.fwjjustice.org, publish reports and our biannual newsletter, Farmworker Justice News, sponsor and speak at many conferences, and facilitate communication.

How can you be helpful to farmworkers and to the mission of the Farmworker Justice Fund? How can you learn about our challenges and our victories?

You can: read our biannual newsletter-Farmworker Justice News; respond to requests to contact government agencies and Congress to advance farmworkers' interests; collaborate on our education projects in farmworker communities; and keep track of developing issues on our website www.fwjjustice.org. You can volunteer, like our wonderful volunteer attorney Jim Leonard, by donating your time.

You can help FJF immensely by contributing financial support. Your tax-deductible donation is vital (FJF is a 501(c)(3) tax-exempt organization). Farmworkers cannot afford to pay for our services. They earn an average of \$7,500 per year. Farmworker justice needs your support.

Farmworker Justice Fund, Inc.



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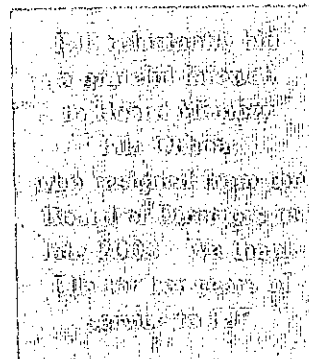
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Immigration Policy and Guestworker Programs

Most farmworkers now are immigrants. Their precise status in this country directly affects their wages and working conditions. FJF seeks to promote decent treatment of immigrant workers in agriculture by providing farmworkers with a true immigration status, one that enables them to exercise the economic and political freedoms on which this country is based. Many agricultural employers, by contrast, prefer to place farmworkers in a vulnerable status as a "nonimmigrant" employed on a temporary work visa, commonly called a "guestworker" status. As guestworkers, migrant workers justifiably fear that complaining about the job will lead to discharge, deportation, and blacklisting from future participation in the program. Under guestworker programs, the employers control both the job and access to a visa. Their guestworker employees lack any bargaining power, either economic or political. The existing agricultural guestworker program is known as the "H-2A program."

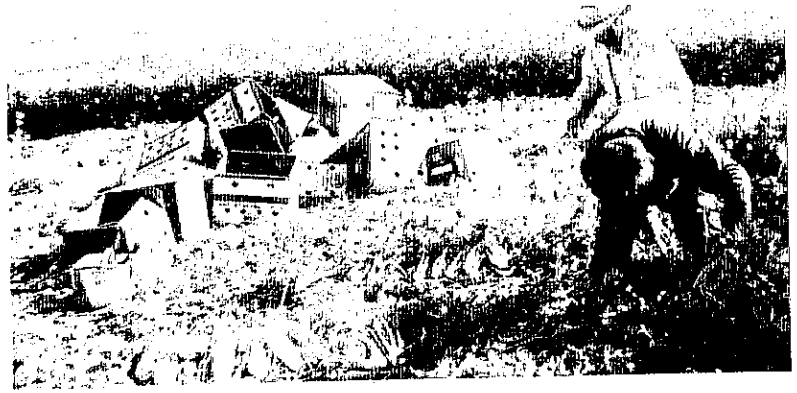
FJF engages in monitoring, analysis, coalition building, dissemination of information to

farmworkers organizations, public education through the media and publications, litigation in federal and state courts, training of lawyers and paralegals, and other activities. Some of our activities regarding public policy are highlighted below.

Public Policy in Congress

FJF has played a major role in defending against agribusiness proposals in Congress on guestworker programs, promoting appropriate immigration policies, and paving the way for an historic compromise that is the subject of discussion in Congress.

Since 1995 and through the present, agribusiness groups have been lobbying for fundamental changes to the H-2A temporary foreign agricultural worker program. These changes, if enacted would have reduced government oversight over this guestworker program, lowered the wage rates, removed most of the labor protections and transformed most of the farm labor force into non-immigrant "guestworkers" who would lack economic or political bargaining power.



FJF has educated organizations and the public about these bills and helped build coalitions to oppose them. We use e-mail listserves, extensive media work, our website, numerous speaking engagements, conference calls, newsletters and other publications, and other methods to achieve our goals. At times, FJF engages in direct lobbying, usually in collaboration with organizations like the United Farm Workers, the United Food and Commercial Workers Union, the AFL-CIO, the National Council of La Raza, and many others. FJF and the UFW have worked closely on this project.

A major breakthrough occurred in 2003 after years of defending against bad bills and unsuccessfully promoting bills introduced by pro-farmworker members of Congress. On September 23, 2003, Sen. Edward Kennedy, Rep. Howard Berman, Sen. Larry Craig, Rep. Chris Cannon, and Rep. Ciro Rodriguez announced their introduction of legislation containing a compromise. The compromise among them resulted from negotiations between the United Farm Workers of America (AFL-CIO) and major agribusiness

employer organizations. The Farm Labor Organizing Committee (AFL-CIO), the National Council of La Raza, and many other farmworker advocacy organizations are taking steps to win passage of this compromise during 2004.

The bill's name is the Agricultural Jobs, Opportunity, Benefits and Security Act of 2003 or "AgJOBS." In the House of Representatives, its number is H.R. 3142. In the Senate, it is S.1645. At press time there were at least 51 Senators cosponsoring the legislation, one-half Republican and one-half Democratic. FJF organized a "sign-on" letter in support of the bill that contained 118 organizations around the country and has spoken widely about the bill.

The compromise contains two major parts: (1) a legalization program that allows undocumented farmworkers who have been working in American agriculture to apply for temporary immigration status and gain permanent immigration status upon completing a multi-year agricultural work requirement, with the right of their spouses and children to become immigrants once the farmworker becomes a permanent resident immigrant,



and (2) revisions to the H-2A agricultural guestworker program that streamline the process by reducing employer's paperwork and time frames for H-2A applications, modify the wage-setting process, create incentives for employers to negotiate in good faith with labor unions, and give the guestworkers the right to enforce their H-2A rights in federal court.

In late November, Rep. Robert Goodlatte (R.-Va.), chair of the House Agriculture Committee, and an immigration-restrictionist who opposes the AgJOBS legislation, introduced a bill to make the H-2A program far worse for workers and "better" for employers. No legalization program is contained in his legislation. It is H.R. 3604. While some growers support the bill, the main employer groups still want the compromise to become law.

President Bush, on January 7, 2004, spoke about immigration policy. His statement of principles, though recognizing the value of immigrants, including undocumented workers, to America, contained general statements of proposed policy that would, if converted into legislation, result in a massively

abusive guestworker program. Two weeks later, Sen. Daschle (D.-S.D.) and Sen. Hagel (R.-Neb.), introduced legislation that is far more sensitive to the needs of immigrants and to working people.

FJF monitors these developments closely, receives many requests for assistance in developing and analyzing immigration-policy proposals, participates in "think tank" discussions, and helps farmworker organizations have a voice in these debates.

Immigration Policy Advocacy in Administrative Agencies and the Courts Litigation

FJF has long specialized in providing legal representation to workers employed under the H-2A guestworker program. These lawsuits have challenged both the government's repeated failure to enforce the law and the employer's unwillingness to comply with the program's contractual and regulatory requirements.

In late 2002, FJF and the law firm of James & Hoffinan won the case



United Farm Workers of America and Farm Labor Organizing Committee v. Elaine Chao, Secretary of Labor, for the refusal of the Department of Labor to issue the annual "adverse effect wage rates" under the H-2A program. Tens of thousands of farmworkers had been harmed by the agency's refusal to issue the wage rates due to political pressure from agribusiness.

In 2003, FJF helped California farmworker law advocates in their successful efforts to prevent employers from improperly hiring H-2A guestworkers. It is also assisting lawyers around the country in efforts to prevent H-2A workers from effectively being deprived of the minimum wage by being forced to absorb the costs of travel to the job.

In *Reyes-Gaona v. North Carolina Growers Association*, FJF co-counseled an age discrimination case with the AARP Foundation on behalf of a Mexican applicant for an H-2A job who was refused employment because he was over 40 years old. The U.S. Court of Appeals in 2001 ruled against our client, holding that anti-discrimination laws do not apply to hiring abroad even when the defendant and the job are based in

the U.S. FJF is advocating to end this improper discrimination.

FJF continues to co-counsel *Rowe v. Grapevine Corp.*, a case filed in 1991 on behalf of Jamaican apple pickers who were employed as H-2A guestworkers in West Virginia. The state supreme court has twice ruled in our favor and reinstated the case after adverse lower court decisions.

Administrative Advocacy

FJF monitors developments in the Department of Labor and other agencies that affect the H-2A program, educates farmworker advocates and the public about these developments, and seeks improved regulations and decision-making through meetings with officials, submissions of formal comments and litigation.

For example, legal services attorneys in Florida won an important case called *Arriaga* in the U.S. Court of Appeals for the Eleventh Circuit regarding the transportation costs owed to H-2A program farmworkers. The Department of Labor has taken an inappropriate approach to the decision, essentially refusing to



take action to ensure that other employers comply with the Fair Labor Standards Act as interpreted by the court. To seek a change in the DOL position, FJF has met with Assistant Secretary of Labor for Employment Standards, Victoria Lipnic, Deputy Assistant Secretary of Labor for Employment and Training David Dye, Wage and Hour Administrator Tammy McCutcheon and others. FJF has informed the Senate regarding inappropriate legal positions taken regarding the H-2A program by the nominee for

Solicitor of Labor, Howard Radzely, and that nomination has not been approved despite being pending for eleven months. We have also assisted attorneys in plans for similar litigation in other jurisdictions.

The Department of Labor is revising its manual for the H-2A program. FJF is monitoring the revisions and advocating for fair, reasonable procedures.

Labor Issues



Many farmworkers do not earn a fair wage or even the federal minimum wage. Growers often seek to avoid their obligations under state or federal employment law by hiring "farm labor contractors," also known as "crewleaders" to serve as their labor intermediaries. The use of labor contractors is one form of "contingent work" arrangements. One-half of all farmworkers are hired through such labor intermediaries. Many labor contractors operate in the United States and abroad.

Many growers who use crewleaders claim that they do not "employ" any of the farmworkers in their fields and disclaim any responsibility for workers' treatment or compliance with the minimum wage or other required labor protections. The result is often poor wages and hazardous working conditions. The laws regulating farm labor contractors are rarely enforced, and even when one bad contractor is put out of business, another labor contractor immediately pops up to take his place. It has long been obvious that the real economic power in the contracting system rests with the growers, not the contractors. As such, the growers

should bear the responsibility to provide labor protections to the workers.

FJF has played a leading role nationally on contingent-worker issues. FJF has helped shape and promote the "joint employer" concept to ensure that growers and contractors accept responsibility for farmworkers' legal protections. Some of our activities include:

- Assisting litigators frame their arguments and submitting amicus curiae briefs on the joint employment issue. Training farmworker lawyers to successfully argue the joint employment issue
- Co-counseling cases against International Paper, Georgia-Pacific, and Champion and their forest replanting contractors who employed H-2B guestworkers and failed to pay them overtime and other benefits
- Co-authoring a major law review article to offer judges and litigators a new approach for conceptualizing joint employer cases, entitled "Enforcing Fair Labor Standards in the Modern Sweatshop: Rediscovering the Statutory



Definition of Employment,"
UCLA Law Review 983 (1999).

With the National Employment Law Project, FJF has co-sponsored the Subcontracted Work Initiative Strategy Forum in Washington, D.C. and Berkeley, California. At these participatory conferences, worker representatives from various industries - garment, building services, agriculture, and high-tech - examine the contingent worker mechanisms being used by their employers and the strategies that have empowered contingent workers to improve their conditions.

Encouraging The Use Of The "Hot Goods Remedy"

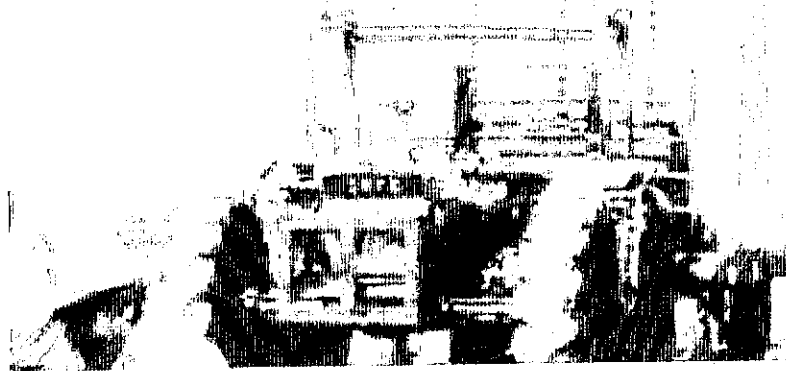
In order to encourage farmworker advocates' use of the special and powerful tool known as the "hot goods" remedy, FJF published a manual entitled "Hot Goods Temporary Restraining Orders under the Fair Labor Standards Act in the Agricultural Sector of the Economy: A Manual for Legal Assistance Programs." The hot goods remedy enables the U.S. Department of Labor to seize goods in order to force defendants to pay workers the wages due

them under the minimum wage or overtime provisions of the Fair Labor Standards Act (FLSA) or to remedy child labor violations. FJF sent copies of the manual to all farmworker legal aid programs and to DOL's national and regional offices around the country.

The FLSA's hot goods provisions gives DOL the authority to sue in federal court to enjoin any person from transporting or selling, for delivery across state lines, any goods which have been produced by employees who were denied the federally required minimum wage or overtime compensation, or where goods were produced with illegal child labor. Such goods are considered tainted and hence to pollute the channels of interstate commerce, much like hot cargo under labor law.

A hot goods injunction can be issued by a district court on a permanent basis after a full trial. However, a court can issue a temporary restraining order (TRO) or a preliminary injunction, within a day or two of the filing of the lawsuit.

Under the broad definitions of the FLSA, an employee is considered to be "producing goods" for interstate commerce when, for



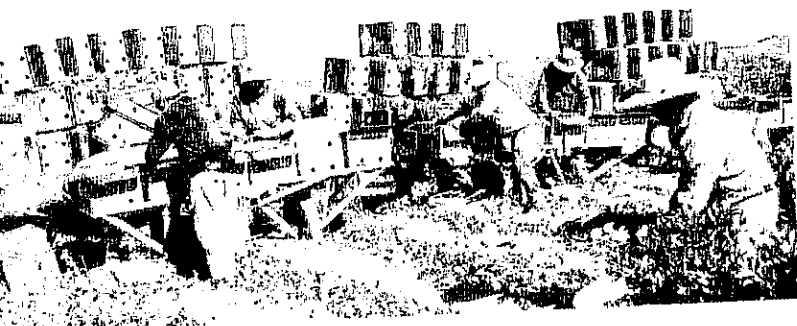
example, he is cultivating, harvesting, sorting or packing agricultural products that will be shipped out of state. Virtually all agricultural workers can satisfy this requirement.

When DOL brings a TRO action, whoever has possession of the hot goods can be enjoined from shipping them any further. As a result, even if the farmer has already shipped the goods, a processor, packer, wholesaler or possibly even a retailer can be barred from shipping or selling the goods until the "taint" is removed by paying the workers their FLSA required wages, remedying the child labor violations, and/or complying with any other remedial order issued by the court. The farmer cannot evade liability by arguing that it was his farm labor contractor, and not he, who committed the wage or child labor violations. In such a case, the farmer (and any other possessor of the hot goods further downstream

- even one who is completely ignorant of the FLSA violations - can be enjoined from shipping the goods until the violations have been remedied.

Issuance of a hot goods TRO or preliminary injunction puts great pressure on all the defendants to resolve the case as soon as possible, and in some instances a defendant who claims not to be the employer will pay to resolve the case (later seeking reimbursement from the purported employer), just to get the goods quickly on their way.

Since the publication of the manual, FJF has remained in contact with legal assistance programs and DOL offices throughout the country by means of conference calls, attendance at meetings and conferences, and discussions of individual potential hot goods cases, in order to facilitate greater use of the hot goods remedy for the benefit of farmworkers.



Environmental Health Education for Border Communities: Project Clean Environment for Healthy Kids

FJF's Project Clean Environment for Healthy Kids is a health promotion program. It brings environmental health education to health professionals and community residents on both sides of the U.S. Mexico border. The Project alerts the community to practical ways to reduce or eliminate their exposures to environmental health hazards. It also helps health professionals improve their diagnosis and treatment of health problems related to pesticide exposure. FJF has developed a curriculum and outreach materials for promotores de salud (lay health educators) and a reference manual on the health effects of pesticides for health professionals.

The Project has two primary components:

1. Pesticide workshops for health professionals from the U.S. and Mexico. The seminars organized by FJF, which are often the first environmental health training that the health professional has ever received, raise clinicians' awareness of how to recognize and treat acute pesticide poisoning and the epidemiological research

linking pesticide exposures to cancer, infertility and Parkinson's Disease. The workshop participants learn about household products as well as agricultural pesticides. By focusing on both acute and chronic health effects, the clinicians learn the practical tools for their daily practice and information to educate their patients about reducing exposure. Workshops have been held at conferences and at migrant health clinics in Brawley, CA, Las Cruces, NM, Yuma, AZ, Harlingen TX, and El Paso, TX. Approximately 100 clinicians have been trained each year.

2. Training farmworkers and low-income border residents to serve as promotores de salud. Through an intensive four-day popular education style workshop, FJF prepares farmworkers and low-income border residents to serve as promotores de salud. The promotores educate their peers to recognize and reduce exposure to environmental health hazards. Emphasis is placed on teaching practical preventive strategies that low-income residents can adopt to



protect their children and themselves. The promotores address pesticide exposures at home and at work, health problems related to contaminated drinking water or inadequate waste disposal, lead poisoning and asthma. Each year, FJF partners with community-based organizations in two border towns to carry out the program. Our local partners include Texas Rural Legal Aid of Weslaco, TX, Campesinos Sin Fronteras of Somerton, AZ, Organización en California de Líderes Campesinas of Pomona, CA, and Las Americas Immigrant and Advocacy Center of El Paso, TX.

On September 18, 2003, FJF hosted a one-day conference in San Diego for community health outreach workers and promotores de salud. The conference brought

together 70 outreach workers and others from health clinics, farmworker groups, environmental organizations and government agencies in San Diego and Imperial Counties in California and Tijuana, Mexico. This was the first such conference in the California-Baja California border region, focusing on the links between the environment and the health of low-income border residents, especially children. The conference featured nine workshops on pesticide safety, adult and childhood lead poisoning, air pollution, and water contamination. A similar conference is planned for El Paso, TX in 2004.



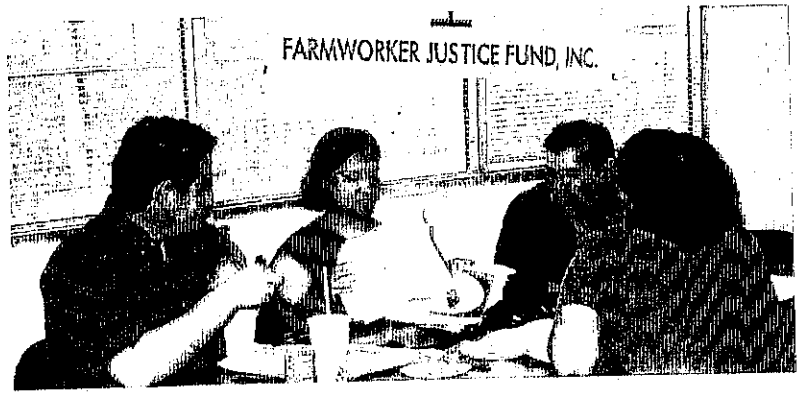
Advocacy and Technical Assistance on Occupational Health and Safety

Agriculture consistently ranks as one of the three most hazardous occupations in the U.S. Half of all farmworkers report suffering from pesticide-related illnesses during their working lives and up to 20,000 acute poisonings among agricultural workers are diagnosed each year. As a consequence, improving health and safety for farmworkers is one of FJF's primary goals. Through advocacy, administrative and legislative monitoring, litigation, technical assistance, training, and public education FJF seeks to draw public attention to the workplace hazards facing farmworkers and the ways in which these risks can be reduced or eliminated. Our activities include the following:

Working in collaboration with farmworker organizations and advocates from around the country, we press Congress and the U.S. Environmental Protection Agency (EPA) to adopt the statutes, regulations or policies needed to improve pesticide safety on the farm. One legislative victory this year, was to secure passage of a pesticide registration fee bill which creates a \$1 million fund to enhance farmworker protection activities at the EPA.

Currently, we are working with EPA to use these funds to establish a national pesticide incident reporting system and a right-to-know program for farmworkers. By requiring hazard communication, the EPA would be fulfilling a promise it made to farmworkers over a decade ago, and affording them the right to information and training which is already available to workers in all other industries. Under a right to know program, farmworkers would be informed of the health hazards they face from the specific pesticides used at their work sites and the steps they can take to reduce exposure to themselves and their families.

In addition, to redress the EPA's failure to eliminate dangerous pesticides from the workplace, FJF, together with the Natural Resources Defense Council (NRDC) and Earthjustice filed a pair of lawsuits. The first, UFW v. EPA, challenges the EPA's failure to ban use of the neurotoxic pesticide guthion, despite the Agency's acknowledgement that it poses unacceptable health risks to agricultural workers. The second, NRDC v. EPA, seeks to reverse the EPA's failure to implement the safeguards contained in the Food

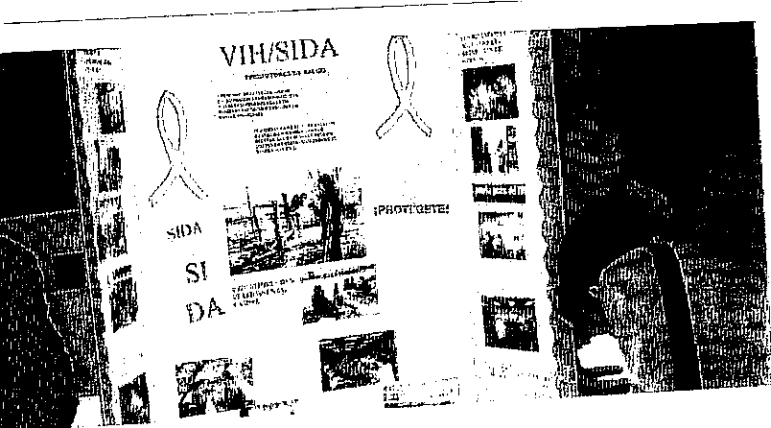


Quality Protection Act, to protect farmworker children and others living in rural areas (a companion case was filed by Attorneys General from four states which fully supports our position).

We also played an active role in the EPA's efforts to assess the effectiveness of the Worker Protection Standard, ensuring the participation of farmworker advocates on every subcommittee and participating on two of the committees ourselves (i.e., the Hazard Communication and Training Workgroups). We also carefully reviewed and filed comments critical of the EPA's decisions to register/re-register lindane (a known carcinogen) and other highly toxic pesticides. To make this process more transparent, we persuaded the EPA to hold two national seminars on its occupational risk assessment, which we helped organize (and secured scholarships to ensure attendance by representatives of farmworker unions and organizations). In order to ensure that our views are heard, we also participate on two EPA national advisory committees, the Committee to Advise on

Registration and Transition, and the Children's Health Protection Advisory Committee.

Part of our effort is also geared towards educating health professionals and the public about the health risks associated with pesticide exposure. In this vein, we participated in the EPA's National Initiative on Pesticides and Health Care Providers, and created minimum competency standards for primary care clinicians concerning the recognition and treatment of pesticide-related health problems. We also provide technical assistance to over 125 migrant and community health centers around the country to inform them of recent research and policy changes in the area of occupational health and safety and pesticides. As part of this effort, we present seminars each year at migrant stream forums, the National Farmworker Health Conference and other relevant conferences and write articles for newsletters published by the National Center for Farmworker Health, the Migrant Clinicians Network, the National Association for Community Health Centers, the Workplace Injury Litigation Group, and others.



HIV/AIDS Prevention Programs & Services

The National Commission to Prevent Infant Mortality estimates that the rate of HIV/AIDS infection among migrant and seasonal farmworkers is about 10 times higher than the U.S. national average. At health conferences held in 1991, 1994, and 1997, farmworker women consistently recommended the creation or expansion of community education efforts aimed at reducing the risk of HIV/AIDS among farmworkers and their families.

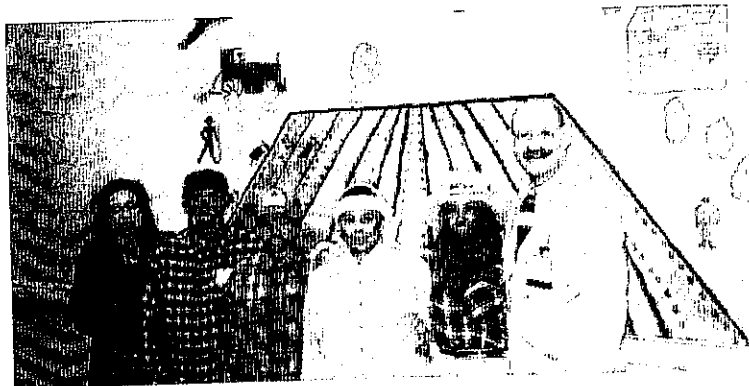
To increase the availability of HIV/AIDS prevention services in the farmworker community, FJF offers capacity building assistance (CBA) to community-based organizations (CBOs), community health centers, health departments, and community planning groups to help them start, improve or expand their HIV prevention programs for migrant and seasonal farmworkers and their partners and children.

Our capacity building approach is multi-faceted, focusing on program development and community mobilization. FJF's capacity building services include:

- Developing and implementing an HIV/AIDS peer educator

program for lay health educators or Promotores de Salud.

- ▲ The program's methodology is to train and supervise farmworker men, women and youth who in turn educate their peers on how to prevent HIV/AIDS, tuberculosis and sexually transmitted diseases (STD's). Peer education is conducted in the fields, at health fairs, community meetings, in workers' homes and in other venues.
- ▲ FJF's local partners include: Valley AIDS Council of McAllen TX, Campesinos Sin Fronteras of Somerton AZ, Organización en California de Lideres Campesinas of Pomona CA, Nuestra Comunidad Sana of Hood River, OR, Cochise County Health Department of Douglas, AZ, Las Americas Immigrant and Advocacy Center of El Paso, TX, Community Health Center of South Dade County, FL and the Guatemala-Maya Center of Lake Worth, FL. Together we have trained over 250 farmworker Promotores since 1997.



- ▲ In 2002 alone, FJF-trained promotores provided education to more than 35,000 farmworkers and their family members.
- Following the success of the Promotores de Salud program, FJF adapted and implemented the Popular Opinion Leader model to train peer educators who are young migrant men who have sex with men (YMSM). Two pilot projects are now underway using this approach, in which FJF has partnered with the Valley AIDS Council of TX and the Vista Community Clinic of North San Diego County, CA.
- Incorporating cultural competency and linguistic appropriateness into prevention activities and materials.
- Program Evaluation
- Developing and administrating needs assessment and other questionnaires
- Community leadership development.
- Developing social marketing campaigns.

In light of the bi-national character of many farmworker families, FJF has incorporated a bi-national (U.S.-Mexico) component to its

HIV/AIDS prevention program. Working in collaboration with the U.S.-Mexico Border Health Association and our Bi-national Leadership Group Against AIDS (comprised of 20 representatives from the U.S. and Mexico) we have done (or are doing) the following:

- Implementing a Sister City Promotores de Salud AIDS Prevention Project in McAllen, TX and Reynosa, Mexico.
- Held a bi-national leadership conference in March 2003 in Washington D.C.
- Bridging Borders to Prevent AIDS Conference was held in McAllen, TX from March 5-7, 2004, for 100 participants.
- Creating a bi-national HIV/AIDS prevention services directory for groups working with migrant and seasonal farmworkers.

FJF shares HIV/AIDS prevention strategies with dozens of groups around the country through its e-mail listserve "HIVcampesino."

FJF was honored to receive the 2000 Centers for Disease Control and Prevention (CDC) National Business and Labor Award for Leadership on HIV/AIDS for its initiative to educate farmworker families.



FJF Litigates Wage Case to Victory Against Department of Labor

The Farmworker Justice Fund won a court victory that enabled thousands of seasonal farmworkers under the H-2A guestworker program to earn the wage rates to which they are entitled. The case is *United Farm Workers and Farm Labor Organizing Committee v. Elaine Chao, Secretary of Labor*, 227 F. Supp. 2d 102 (D.D.C. 2002). David Dean of James & Hoffman served as lead counsel. FJF deeply appreciates the pro bono services provided by his Washington, D.C. labor law firm.

In 2001, the Department of Labor secretly granted itself the discretion to delay issuing annual wage rates applicable to employers who hire guestworkers under the H-2A program. Implementing that policy led to thousands of farmworkers - foreign and domestic workers at those H-2A program employers—earning the previous year's wage rates, which were lower than the new year's wage rates.

Each year the Department of Labor publishes the "adverse effect wage rates" for the H-2A program in each state. The wages are based on the previous year's average hourly wage rates as determined

by U.S. Department of Agriculture surveys. In 2001, the DOL did not issue the annual wage rates at the beginning of the year. Once FJF filed the lawsuit, the court scheduled a hearing on the plaintiffs' motion for a preliminary injunction in August 2001. DOL issued the wage rates just before the hearing was held. The court therefore took no action. In 2002, the DOL again refused to issue the wage rates on time. We went back into court but the Labor Department issued the wage rates before a court hearing could be held in May 2002.

On September 10, 2002, Judge Gladys Kessler of the U.S. District Court for the District of Columbia ruled that the Department of Labor had violated its own regulations and the federal Administrative Procedure Act. DOL did not pursue an appeal. It paid the plaintiffs attorneys' fees. DOL issued the wage rate on time in February 2003.

The DOL's action was unjustified and harsh. The workers could not obtain retroactive pay increases. Consequently, until August in 2001 and until May in 2002, many workers were underpaid. For this reason, the victory was bittersweet.

International Labor and Human Rights Law



FJF uses international labor laws and human rights laws to improve conditions for American farmworkers, many of whom cross international borders. We are helping to develop the labor law rights of transnational workers and enhance the operation of new international institutions in the global economy.

FJF has assisted organizations seeking to reform governmental policies and private-employer conduct in the United States under the "labor side agreement" to the North American Free Trade Agreement (NAFTA). This side agreement is formally known as the North American Agreement on Labor Cooperation (NAALC). Under NAALC, the United States, Canada and Mexico each have agreed to enforce their own labor laws (so as not to achieve a trade advantage through labor-cost savings based on toleration of poor labor practices). In addition, migrant workers' national labor rights must be equal to those for other workers. The principal remedies for most violations of NAALC are research and consultations to improve conditions. FJF, upon request of the governments, also provided legal and policy analysis, as well

as suggestions about effective ways to educate migrating farmworkers about their rights in the three countries.

In February 2003, FJF and a Mexican labor organization, Central Independiente de Obreros Agrícolas y Campesinos (CIOAC), filed a petition under the NAALC challenging the U.S. government's treatment on behalf of Mexican citizens employed in North Carolina under the H-2A guestworker program. In September 2003, Mexico accepted the petition and is conducting an investigation. FJF previously had assisted Human Rights Watch, Mother Jones Magazine, and the Charlotte Observer newspaper in exposing abuses in North Carolina. Some of the affected workers are employed in North Carolina's cucumber fields, where there is labor organizing by the Farm Labor Organizing Committee, AFL-CIO (which is represented on FJF's Board of Directors).

FJF is collaborating with Mexican labor lawyers and the AFL-CIO's American Center on International Labor Solidarity to seek enforcement of a Mexican labor law that regulates the hiring of Mexican citizens for employment abroad. The Mexican citizens who



are hired by U.S. farms under the H-2A program are not complying with the Mexican labor law. The law requires submission of employment contracts to a local labor board, payment of a bond to guarantee compliance with the contract, and payment of the workers' visa and transportation costs. FJF intends to seek Mexican government enforcement of this law on behalf of H-2A workers. In 2003, FJF participated in an international conference in Monterrey, Mexico regarding labor boards in the three NAFTA countries.

During 2001-2002, FJF conducted a Guestworker Rights Education Project in Mexico to educate H-2A program guestworkers about their rights while working on temporary visas in the U.S. The project reached 28 local communities and about 1,800 individuals. Such education during the off-season is more effective than efforts during the season because the workers are intimidated by the employers in the U.S. during the season from speaking with outreach workers in the U.S.

In May 2001, FJF co-sponsored, with the American University Washington College of Law, a

conference for farmworker advocates on international labor and human rights law. Experts discussed the NAALC, the International Labor Organization's Declaration of Fundamental Principles and Rights at Work, the Inter-American Commission on Human Rights, the use of other nation's laws in U.S. courts, and related matters. The keynote speaker was John Hiatt, General Counsel of the AFL-CIO. The conference was designed to help farmworker advocates strategize about the potential for using international law and international forums to advance farmworkers' interests.

In June 2001, Bruce Goldstein served as a worker representative in the United States delegation to the 89th Conference of the International Labor Organization (ILO) in Geneva, Switzerland. The ILO is a specialized, independent agency of the United Nations. At this conference, a committee of worker, employer and government representatives from around the world negotiated over the contents of a proposed treaty (called a "convention") to promote agricultural safety and health. FJF was invited to assist the AFL-CIO during the conference and was



part of the official U.S. delegation. The negotiations succeeded and the ILO adopted a Convention on Safety and Health in Agriculture. The U.S. government voted in favor of the agreement as did the large majority of worker, government and employer representatives. However, the U.S. employer representative "abstained." Once a convention is approved at the ILO, it is not

binding on a nation unless its government ratifies the convention. FJF would like to actively promote ratification by the U.S. Adoption as implementation of the Convention would lead to improved standards for agricultural safety and health in most countries, including the United States.



Ending the Abuses and Root Causes of Child Labor

FJF has long been a leader in seeking to improve the protections for children working in agriculture. The jumping-off point for FJF's campaign in the last few years is its July 2000 report entitled *The Ones the Law Forgot: Children Working in Agriculture*, which describes the health and safety hazards facing children working in agriculture, explains the federal and state laws that regulate this work, and makes detailed policy recommendations based on deficiencies in these laws. This report, funded by a grant from the U.S. Department of Health and Human Services, was provided to policy makers in Congress and the executive branch. (It is also available on FJF's Web site, www.fwjjustice.org, by clicking on "Safety & Health" and then clicking on "Go to child labor.")

The basic message of *The Ones the Law Forgot* is that even though agriculture is one of the two or three most hazardous work environments, the federal child labor laws are less protective in agriculture than in any other industry. Even though far more children work in the retail trade (restaurants, merchandise stores,

etc.) than in agriculture, over 40 percent of youth killed on the job work in agriculture. Crop agriculture, where most migrant and seasonal farmworkers are employed, is particularly dangerous; the fatality rate there is twice as high as in livestock agriculture. Incidents involving vehicles and farm machinery are by far the leading cause of death. The FJF child labor report also notes that nonfatal injuries in agriculture are very high; over 22,000 children per year suffer such injuries.

FJF has been working with various groups to seek to improve the situation described in *The Ones the Law Forgot* — particularly with the Child Labor Coalition, a national network of organizations committed to eliminating child labor abuses and promoting legislative and other initiatives on several fronts to improve the protections for children in agriculture.

There are three major initiatives to which FJF has devoted its ongoing efforts to improve the working conditions of children in agriculture.

1. **Strengthening child labor laws.** We are supporting



legislation that would strengthen the federal child labor laws in several important respects. Congressman Tom Lantos (D-Calif.) introduced the Youth Worker Protection Act on September 23, 2003, and Senator Tom Harkin (D-Iowa) and Congresswoman Lucille Roybal-Allard (D-Calif.) are expected to introduce bills in early 2004 to amend the child labor laws. All of these bills would improve the current law, and in particular they would remedy the four main problems in the existing law (the Fair Labor Standards Act, or FLSA) with regard to children working in agriculture.

The first problem is that in jobs that are particularly hazardous for children, the minimum age for employment in agriculture is only 16 years, whereas in every other industry the minimum age is 18 years. The existing law needs to be amended to raise the minimum age for hazardous jobs in agriculture to 18 years. Moreover, the listing of jobs that are considered particularly hazardous — included in Hazardous Occupation Orders (commonly known as HOs) issued as regulations by the U.S.

Department of Labor — needs to be thoroughly revised. The National Institute for Occupational Safety and Health (NIOSH), in a detailed report published in May 2002, recommended such changes. FJF and the Child Labor Coalition have met with officials of the U.S. Department of Labor (DOL) to urge DOL to take prompt steps to make changes.

Second, in other jobs (that is, those that are not considered particularly hazardous), the normal minimum age for employment in agriculture is 14 years, whereas in every other industry the normal minimum age is 16 years. In agriculture there are many exceptions to the age 14 minimum, with the result that children as young as 10 years old are permitted to work. Outside of agriculture there are very few exceptions to the normal age 16 minimum age: children of age 14 and 15 can work only in certain limited jobs in retail, food service and gasoline service establishments. The existing law needs to be amended to provide greater protections for children in agriculture who work in non-hazardous jobs.

Third, in agriculture the only restriction on working hours is



that children cannot work during school hours. Apart from this requirement, there is no limit on how early in the day children have to start work or how late in the day they have to work, and not even any limit on the number of hours they can work during the day. Outside of agriculture, there are far greater hours-of-work protections for child workers. Fourth, the law imposes inadequate penalties when child labor violations occur.

2. **Improving protections in the most hazardous jobs.** FJF is supporting efforts by the Child Labor Coalition to persuade the U.S. Department of Labor to update and strengthen its regulations that define hazardous occupations in which children are forbidden to work. Two of the most important NIOSH recommendations for children working in agriculture relate to pesticides and transportation. FJF is advocating changes consistent with these recommendations to protect children from illnesses and injuries related to exposure to

toxic pesticides and driving and riding in vehicles.

3. **Utilizing international child labor standards to improve child labor standards in the United States.** FJF is working to assure that the United States lives up to its treaty obligations with the International Labor Organization (ILO), a United Nations agency. Under ILO Convention 182 on the Elimination of the Worst Forms of Child Labor, which was ratified by the United States Senate in 1999, those nations which ratify the Convention are forbidden to engage in any forms of slavery, debt bondage, other illicit activities, and "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children." FJF has been working with the Child Labor Coalition to determine any changes in U.S. law or practice that may be necessary.

Combating the Exploitation of Farmworkers



Farmworkers are among the most exploited workers. There are three main reasons for this situation. First, the growers who benefit from the labor of farmworkers often seek to escape responsibility for these workers' wages and working conditions by relying on intermediaries - often called "farm labor contractors" or "crew leaders" - to supply and supervise the farmworkers, and then contending that only the crew leaders, and not the growers, are the "employers" of the workers. Second, the large majority of farmworkers are foreign nationals - recent immigrants or guestworkers on temporary visas or undocumented workers - who typically do not speak English well, are unfamiliar with the laws, and fear raising questions about their employers' exploitative practices. Third, our labor laws routinely exclude or discriminate against agricultural workers, and the laws that do cover farmworkers have not been vigorously enforced. As a result, farmworkers labor in the lowest paid occupation and frequently suffer violations of their limited labor law rights.

The Farmworker Justice Fund engages in several activities to reduce the exploitation of farmworkers: preparing publications and reports that document and publicize the abuse of farmworkers and the inadequacies of existing law, conducting training that helps to make farmworker advocates more effective in carrying out their mission, conducting strategic litigation to improve the wages and working conditions of farmworkers on a broad scale, demanding improvements in government enforcement of labor laws, and advocating for stronger labor law protections.

FJF's publications include a law review article, "Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment," 46 U.C.L.A. Law Review 983 (1999), co-authored by FJF Co-Executive Director Bruce Goldstein and three other legal advocates. This article details the origins of the broad concept of the employment relationship that is used in the federal minimum wage law and the principal federal employment



law for farmworkers (the Migrant and Seasonal Agricultural Worker Protection Act, or "AWPA"). Relying on a historical analysis, it suggests a new approach to holding both a grower and the crew leader liable as "joint employers" when labor law violations occur. The article's ideas have found their way into court briefs and are beginning to influence court decisions. To maximize the real-world effect of the ideas in the article and other strategies, FJF, in cooperation with the National Employment Law Project (NELP), sponsored the Subcontracted Work Initiative Strategy Forums in Washington, D.C., and in Berkeley, California, for worker representatives from various industries - garment manufacturing, building services, agriculture, and high-tech. Advocates in specific industries benefited through a sharing of analyses of systemic problems and the strategies used to combat them. One result of the conferences was the report, "From Orchards to the Internet: Confronting Contingent Work Abuses," co-authored by Bruce Goldstein and NELP's Catherine Ruckelshaus.

Another FJF publication is a litigation manual entitled "Hot Goods Temporary Restraining Orders under the Fair Labor Standards Act in the Agricultural Sector of the Economy: A Manual for Legal Assistance Programs." The "hot goods" remedy enables the U.S. Department of Labor (DOL) to seize goods under an emergency court order in order to force defendants to pay workers the wages due them under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or to remedy child labor violations. FJF sent copies of the manual to all farmworker legal aid programs and to DOL's national and regional offices around the country. The effects of this manual are discussed below in the section on litigation.

The training that FJF has conducted has been both formal and informal. At the National Migrant Advocacy Training Conference, which is held in every other year in conjunction with the National Legal Aid and Defender conference, FJF staff members have helped train attorneys, paralegals, and outreach workers who advocate for migrant farmworkers. FJF has been



exceptionally active in occupational safety and health training for farmworkers and community-based organizations, as is explained elsewhere in this report.

FJF has also been heavily involved in litigation in various ways — co-counseling cases, reviewing briefs, suggesting arguments, and referring cases to other attorneys. For example, in *UFW v. Chao*, FJF and the Washington, D.C., law firm of James & Hoffman represented the United Farm Workers of America, AFL-CIO, and the Farm Labor Organizing Committee, AFL-CIO, in a successful challenge to DOL's delaying action in issuing annual wage rates for temporary foreign agricultural workers under the H-2A visa program. The federal district court in Washington, D.C., agreed with the plaintiffs' position and ruled in 2002 that DOL had violated both its own regulations and the federal Administrative Procedure Act by unlawfully delaying the issuance of the higher wage rates.

FJF also co-counseled cases against International Paper, Georgia-Pacific, and Champion, three forestry products companies which engaged labor contractors to

bring guest workers into the United States under the H-2B visa program to plant pine tree seedlings. The plaintiffs, who suffered minimum wage, overtime compensation, and unsafe transportation violations, argued that because of the control exercised over them by the forestry companies and the complete integration of their work into the companies' operations, the companies jointly employed these workers. The federal court of appeals in Atlanta unfortunately did not accept these arguments and ruled that the seedling planters were not employees of the forestry companies. In the wake of these rulings, FJF has been examining ways, in conjunction with other farmworker advocates, to refine and enhance its efforts to promote the joint employment argument.

Hot goods litigation under the FLSA can be brought only by DOL, but FJF has helped migrant advocates bring potential cases to DOL's attention, which has led to an increase in hot goods cases in agriculture. The FLSA's hot goods provisions gives DOL the authority to sue in federal court to enjoin "any person" from transporting or



selling, for delivery across state lines, any goods which have been produced by employees who were denied the federally required minimum wage or overtime compensation, or where goods were produced with illegal child labor. The court can issue an emergency order barring not just the employer of the underpaid or child workers from moving such tainted goods, but also anyone who subsequently gains possession of the goods, such as a processor, packer, and wholesaler.

In one case in Washington State in which FJF was deeply involved, DOL brought suit against the owner of a cherry orchard which had failed to pay its harvesters, as well as a produce packing company and a produce storage company. Since the cherries were highly perishable, the court allowed them to be shipped further and sold, but ordered that proceeds from the sale sufficient to pay the back wages owed be paid to the court. Eleven days after the lawsuit was filed, \$183,000 had been deposited with the court, to be distributed to the cherry pickers as back wages due. A hot goods emergency court order can pressure on all the

parties in the stream of commerce to resolve the farmworkers' wage issues quickly.

FJF monitors federal agencies' enforcement efforts and seeks improvements. In another important case affecting H-2A workers, *Arriaga v. Florida-Pacific Farms*, in which FJF assisted plaintiffs' counsel (Florida Legal Services, private practitioner Edward Tuddenham and others), the federal court of appeals in Atlanta ruled that the travel, visa, and related expenses to bring H-2A guest workers from their homes in Mexico to their worksite in Florida were essentially recruitment expenses that were primarily for the benefit of the employer, and that therefore the growers' requirement that the workers pay these expenses out of their own pockets was the economic equivalent of a deduction from their wages. As a result, the court held, on their first payday the workers suffered a minimum wage violation, because when these expenses were subtracted from their wages, the workers earned far less than the minimum wage. The *National Law Journal* described this court decision as "the most significant minimum



wage ruling in the past 20 years." During 2003 FJF's Bruce Goldstein and FJF's Advisory Board Chairperson, Maria Echaveste — a former Administrator of the Wage and Hour Division — met with the Assistant Secretary of Labor for Employment Standards, Victoria Lipnic, and the Administrator of the Wage and Hour Division, Tammy McCutchen in an effort to persuade them to enforce the rule the court applied in Arriaga to other employers and other regions of the country. It appears that

only litigation will force the Department of Labor to act appropriately. FJF is now working closely with attorneys in other parts of the country who are handling and developing similar cases to expanding the Arriaga rule throughout the United States.

In these and other ways, FJF continues to promote advances in farmworkers' wages and working conditions.



The Farmworker Justice Award

FJF initiated the Farmworker Justice Award in the year 2000 to recognize individuals and organizations who have demonstrated a strong commitment to migrant farmworkers, effectively advocated for improvements in their working and living conditions, and helped FJF fulfill its mission.

The first annual Farmworker Justice Award was presented to Representative Howard Berman of California. Rep. Berman has represented the 26th District of California since 1983. There is no member of Congress who has given farmworker issues a higher priority or made a more sustained and effective commitment to their cause than Rep. Berman. Farmworkers are fortunate to have a friend who, as the Almanac of American Politics says, is one of the most "creative" and "clear-sighted" members of the United States House of Representatives. In 1975, as a California state legislator, Berman authored the landmark Agricultural Labor

Relations Act that granted collective bargaining rights to farmworkers in California. That law helped Cesar Chávez, Dolores Huerta, and the United Farm Workers achieve unprecedented successes in agricultural union organizing. As a Congressman, Rep. Berman co-authored the agricultural worker "legalization" program in the Immigration Reform and Control Act of 1986, which enabled 1.1 million farmworkers to become legal permanent residents. He has been a major Congressional supporter of publicly-funded legal services for farmworkers and other poor people. Rep. Berman has defended farmworkers' rights during the past eight years as agricultural employers have lobbied strenuously for rollbacks in farm labor laws and establishment of a new guestworker or Bracero program. Since the award, Rep. Berman has led the effort to win a favorable, bipartisan compromise on immigration issues and has been making a determined campaign to enact it into law.





The second annual Farmworker Justice Award, presented on May 20, 2001 - during FJF's twentieth anniversary year - was given to Raul Yzaguirre, President of the National Council of La Raza (NCLR). Raul Yzaguirre has long been a strong advocate for farmworkers. Many of NCLR's constituent organizations also serve farmworkers. These include the Farm Labor Organizing Committee, AFL-CIO, NAF Multicultural Human Development Council, and Home Education Livelihood Program, Inc. In recent years, NCLR has played a leading role in defending and advancing the interests of farmworkers in Congress, where agribusiness interests have pressed legislators to weaken labor laws, reduce labor law enforcement, and convert the nation's farmworkers into guestworkers. The award also represented FJF's appreciation for the extraordinary support that Raul and the National Council of La Raza have extended to the Farmworker Justice Fund. The NCLR-FJF partnership has



substantially improved FJF's ability to serve farmworkers and represent them in the nation's capital and around the country. That relationship has continued to thrive and benefit the nation's farmworkers.

Dolores Huerta, the recipient of the Farmworker Justice Award for 2002, is one of the most successful, dedicated, and staunchest farmworker advocates who has ever lived. She has been an inspiration to the Farmworker Justice Fund for many years, as well as to many, many others. Fittingly, Rep. Howard

Berman of California presented the award on FJF's behalf, as Ms. Huerta kindly presented this award to her friend and collaborator of many years, Mr. Berman, in the year 2000.

Dolores Huerta began a career as a teacher in grammar school, but in the mid-nineteen fifties decided "I could do more by organizing farm workers than by trying to teach their hungry children." In 1962, Dolores joined forces with Cesar Chavez to form the National Farm



Workers Association, which later became the United Farm Workers of America, AFL-CIO. Dolores was the union's main negotiator, and in 1966, she negotiated a union contract with the Schenley Wine Company. This was the first time in the history of the United States that a negotiating committee comprised of farmworkers negotiated a collective bargaining agreement with an agricultural corporation. Together, Dolores Huerta and Cesar Chavez also founded the Robert F. Kennedy Medical Plan, the Juan De La Cruz Farm Worker Pension Fund, and the Farm Workers Credit Union, which were the first medical and pension plan and credit union for farm workers. They also formed the National Farm Workers Service Center, Inc., which builds community-based affordable housing and operates Spanish language radio stations.

Dolores Huerta, the mother of eleven children, inspires farmworkers and their advocates not only because of her successes, but also because of the great personal sacrifices she has made.



As a union leader, Dolores worked tirelessly to administer contracts, develop creative methods of organizing farmworkers, lead strikes and consumer boycotts to improve farmworker wages and working conditions, and lobby against guest worker program. Her efforts in Congress and the

California state legislature resulted in unprecedented labor and immigration protections for farmworkers. Dolores also has been recognized for her success in building the political power of farmworkers and the Latino community, her efforts to reduce

farmworkers' exposure to toxic pesticides, and her leadership on women's issues. She has retired from the Union but continues as a leader in progressive causes.

Rep. George Miller was awarded the 2003 Farmworker Justice Award. Mr. Miller a vigorous, creative advocate in Congress for fair policies toward migrant and seasonal farmworkers. A Democrat, he has represented California's 7th Congressional District since 1975. Rep. Miller is



the ranking minority member on the House Committee on Education and the Workforce.

Rep. Miller has been a hero to the Farmworker Justice Fund, Inc. since FJF's inception in 1981. His many accomplishments include authoring the principal federal employment law for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act of 1983. Through Congressional investigations and oversight of our government's treatment of farmworkers, he has helped tens of thousands of agricultural workers improve their wages and working conditions, including Caribbean sugar cane workers who labored as "guestworkers" on Florida's sugar cane plantations.

Worker advocates are indebted to Rep. Miller for his longstanding support for increasing the minimum wage, ending the use of sweatshop labor, improving workplace safety, and preventing growers from winning legislation

that would transform the farm labor force into a system of exploitable "guestworkers," who would be denied the civil rights, economic freedom and political representation possessed by immigrants and citizens. Rep. Miller, widely known for his

commitment to education, has been confronting the labor abuses associated with globalization. The "Labor Recruiter Accountability Act of 2003" would hold international labor recruiters and the ultimate employers of the recruited workers responsible for their promises to people they enlist and discourage

employers from using disreputable recruiters.

FJF also extends its great appreciation to the many organizations and individuals who contributed financially to make the Farmworker Justice Award receptions successful.



