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# The Law and Migrant Agricultural Workers

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# THE LAW AND MIGRANT AGRICULTURAL WORKERS

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> It is not to die or even die of hunger that makes a man wretched. Many men have died. But it is to live miserably and know not why, to work more and gain nothing, to be heartworn, weary, yet isolated and unrelated.[1]

Approximately 2,000,000 citizens of the United States are engaged in migrant agricultural work, tending the rich soil that produces America's abundance of food and fibre. These citizens follow the crops and the sun, nomads in an affluent society. They travel thousands of miles over super highways lined with neon-lit restaurants, motels and night clubs. What do they have to show for this journey? The answer for most of them is "119 days of farm employment, almost as many days of fruitless search for work—$710.00 earned at farm work during the year."[2]

One of the most evident results of migrancy is an almost complete lack of political power. State residence requirements for voting are difficult to meet, so votes by these people are rarely cast. Consequently their voices are often muted by the more powerful and vocal pressure groups in industry-organized agriculture and labor. While business, agriculture, banking and labor are protected in great part by federal and state legislation from the hazards of the business cycle, weather, unemployment and conditions of the market, the migrant agricultural worker has little to safeguard his interests. No federal minimum wage law sets a floor under his pay scales or a ceiling over his working hours. There is no unemployment insurance when crops are bad, no child labor protection outside school hours and no right to bargain collectively.

This glaring social problem has existed since the early 1920's when the first major farm depression in a quarter of a century rocked the economy. Migrancy increased tremendously during the 1930's when the dust bowl and the depression combined to dispossess the "Okies" and "Arkies" we know so well from the pages of *Tobacco Road* and *The Grapes of Wrath*. Today, caravans still rumble north from Texas, California and Florida, carrying the harvesters of the nation's food who are still being denied the protection of laws enacted over the years to guarantee a modicum of security for most groups in our society.

This article will trace the history of legislative and executive actions to correct abuses in the area of domestic migrant agricultural labor[3] at both the federal and Colorado levels.

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1 3 Carlyle, The Modern Worker, ch. 13 (1843).

2 U.S. Dep't of Labor, Bureau of Employment Security, Economic Aspects of Farm Labor Migrancy (1960) [hereinafter cited as U.S. Economic Aspect Report].

3 The American National intrastate and interstate agricultural work force, as distinguished from the Mexican National or so-called "Bracero."

## I. FEDERAL MIGRATORY LABOR LEGISLATURE PROGRAM

### *Congressional Recognition of the Problem*

There has been a long but almost totally unsuccessful history of legislative attempts to deal with abuses existing in the area of domestic migrant agricultural labor. The first recognition of the problem at the congressional level came in 1936, when the Seventy-fifth Congress created the LaFollette Subcommittee of the Senate Subcommittee on Education and Labor. The purpose of the subcommittee was to investigate violations of the right of free speech and assembly and undue interference with the right of agricultural workers traveling in interstate commerce to bargain collectively. From 1936 until the present time, more than two hundred bills relating to improving the lot of domestic migrant farm labor have been introduced in Congress.[4] These legislative proposals fall into the following general categories:

1. *Extension of Social Security Provisions Relating to Old Age and Survivors' Insurance (OASI).* Proposals to include domestic migrant farm workers within the protective scope of social security began as early as 1937;[5] however, success was not attained until 1954. At that time, Congress broadened OASI coverage to include farm workers earning $100 or more from a single employer during a calendar year. This was the first taste of victory for the proponents of migrant labor legislation. The taste quickly turned sour in 1956 when Congress severely limited OASI coverage through amendments increasing the annual earning requirement and redefining the term "employer" to effectively exclude the farmer hiring the migrants.[6] The Department of Labor estimated that these amendments excluded some 250,000 farm workers from OASI coverage.[7] At the same time, the Social Security Act[8] was amended to extend coverage to *foreign* agricultural workers.[9] Legislation was introduced in 1959 to redefine "employer" to include the farmer and to protect those already included through more exact record requirements.[10] This attempt was unsuccessful.

2. *Extension of the Wage and Hour Benefits of the Fair Labor Standards Act.* The specific exclusion of agricultural workers from the wage and hour provisions of the Fair Labor Standards Act has resulted in a series of proposed amendments, beginning in 1939[11] and continuing with annual regularity until the present.[12] Senate Bill 1122, introduced by Senator Harrison Williams, would establish for migrant workers a progressive minimum wage reaching one dollar per hour after three years.[13] No proposal has yet been enacted.

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4 See Library of Congress Legislative Reference Service, Digest of Public General Bills, 75th Cong. through 86th Cong.

5 H.R. 5807, 75th Cong., 1st Sess. (1937); H.R. 8578, 75th Cong., 2d Sess. (1937).

6 Social Security Act § 105(a), 70 Stat. 807 (1956), 42 U.S.C. §409(h)(2) (1958); amending 49 Stat. 625 (1935); Social Security Act §105(b), 70 Stat. 807, 42 U.S.C. §410(a) (1958), amending 49 Stat. 625 (1935).

7 U.S. Dep't of Labor, Status of Agricultural Workers Under State and Federal Laws 5 (1959).

8 §104(a), 70 Stat. 807 (1956), U.S.C. §410(a)(1)(b) (1959), amending 49 Stat. 625 (1935).

9 1 *United States Code Congressional and Administrative News* 963, 84th Cong., 2d Sess. (1956).

10 H.R. 11547, 86th Cong., 2d Sess. (1959).

11 S. 20008, S. 2220, 75th Cong., 1st Sess. (1939).

12 S. 1122, 87th Cong., 1st Sess. (1961).

13 The average hourly wage for all farm workers in 1959 was $.80, while that of the manufacturing worker was $2.15. U.S. Economic Aspect Report.

3. *Extension of Unemployment Benefits.* Attempts have been made through amendment of the Social Security Act to provide unemployment compensation to migrant farm workers.[14] All these attempts have been unsuccessful. As a result, farm labor is excluded from coverage in every state except Hawaii.[15] However, as Hawaii has a permanent (non-migrant) work force, the exclusion of migrant farm labor from unemployment benefits is state-wide.[16]

4. *Extension of Child Labor Laws.* Attempts were first made in 1941 to amend the Fair Labor Standards Act's (FLSA) provisions relating to child labor to include migrant farm children.[17] Until 1949, however, all attempts at amendment were unsuccessful. In that year, Congress extended the child labor protections to all children under sixteen engaged in interstate agricultural labor during school hours.[18] However, a child below age sixteen, beyond the hours of school, still suffers all the abuses associated with oppressive child labor;[19] moreover, the migrant laboring season is at its peak during the summer vacation from schools. A companion proposal would establish day-care facilities for the children of migrant farm laborers.[20]

5. *Provision for Education.* Until the present session of Congress, no specific proposals relating to the education of migrant children have been introduced.[21] Senate Bill 1124, introduced in the First Session of the Eighty-seventh Congress, would establish grants in aid to states who provide facilities for the education of migrant children during the regular and summer school terms. A companion bill, Senate Bill 1125, would establish adult education courses designed to teach the migrant farm worker a trade to supplement his income and, with the advent of farm mechanization, to prepare him for employment in non-agricultural fields.

6. *Health Legislation Coverage.* Unsuccessful attempts have been made to provide medical facilities for the use of migrants in or near

14 H.R. 6718, 81st Cong., 2d Sess. (1950); S. 3427, 86th Cong., 1st Sess. (1959).

15 *Supra* note 5.

16 The Bureau of Employment Security has found unemployment ranging as high as 40 percent of the available work force in cotton areas. In 1959, farm workers averaged 143 days of farm work. U.S. Economic Aspect Report.

17 S. 2057, 77th Cong., 1st Sess. (1941).

18 Fair Labor Standards Amendments of 1949, §11(c), 63 Stat. 910, as amended, 29 U.S.C. §213(c) (1958).

19 *Ibid.* As amended, §213(c) provides that the provisions of the title relating to child labor shall not apply as to any employee employed in agriculture outside of school hours for the school district in which he is living.

20 S. 1131, 87th Cong., 1st Sess. (1961).

21 In 1940, H.R. 9528, 76th Cong., 2d Sess., recognized the need for such legislation, but made no specific proposals of significance.

the areas of heavy migrant work.[22] Senator Douglas attracted attention to the deficiencies in this area when, during floor debate on the Department of Interior appropriation, he offered an amendment to transfer $500,000 from the general appropriation for the care of migratory birds to the health, care and education of migratory children.[23] The amendment was ruled out of order. Recently a bill to provide grants not to exceed $3,000,000 in any year, to the Surgeon General for improvement of the health of domestic migratory workers, has been introduced in the Senate.[24]

7. *Extension of the National Labor Relations Act.* Any individual employed as an agricultural laborer is specifically excluded from the operation of the NLRA.[25] The first proposal to include farm labor within the NLRA came from the LaFollette Subcommittee, organized to study discrimination against migrants in interstate commerce.[26] This proposal was not successful; however, further proposals have been introduced.[27]

8. *Transportation Measures.* In 1956, the Interstate Commerce Act was amended to allow the commission to establish a safety code relating "to the transport of migrant agricultural workers in interstate commerce."[28] The commission has adopted a comprehensive safety code setting minimum standards of transport to insure the safety and comfort of migrant workers in interstate commerce.

9. *Restriction of Importation of Foreign Nationals For Agricultural Employment.* Public Law 78[29] permits the importation of foreign nationals for seasonal agricultural employment in the United States to insure a sufficient supply of farm labor. The expiration date of this law has been extended every year, from 1951 to the present.[30] A panel of consultants under the Department of Labor reported that many abuses were ingrained in the administration of Public Law 78. Wage levels were forced down and domestic workers were frozen out of jobs in regions dominated by imported labor. Proposals to require employers to give preference to domestic workers have not been successful in Congress.[31]

10. *Construction of Migrant Labor Camps.* Proposals have been made to establish migrant agricultural labor camps, or to transfer existing camps to the Public Housing Authority for use by migrants.[32] None of these measures have been enacted. Another approach recently introduced in Congress would provide long-term, low-interest loans for the construction of adequate housing facilities for migrant workers and their families.[33]

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22 H.R. 10334, 76th Cong., 3d Sess. (1940); S. 1493, 78th Cong., 1st Sess. (1943).

23 Senator Harrison Williams (D. N.J.) has had a similar experience with representatives of the Farm Bureau of his state. This group informed the Senator that they were negative on his program for migratory workers; but asked him if the Congress would appropriate $250,000 to do something about the blackbirds plaguing the crops in this country. *Transcript of Senator Harrison A. Williams and Charles B. Shuman on "Face the Nation" Debate: "The Migrant Farm Worker: Is Federal Legislation Necessary?"* (March 9, 1961).

24 S. 1133, 87th Cong., 1st Sess. (1961).

25 Labor Management Relations Act of 1947 §101(2)(3), 61 Stat. 136, 29 U.S.C. § 152(3) (1958).

26 S. 2860-64, 77th Cong., 2d Sess. (1942).

27 S. 1128, 87th Cong., 1st Sess. (1961).

28 S. 3391, 84th Cong., 1st Sess. (1951); Interstate Commerce Act §2, 70 Stat. 958 (1956), 49 U.S.C. §304(a)(3a) (1958).

29 S. 934, 82nd Cong., 1st Sess. (1951); Agricultural Act of 1949 §501, 65 Stat. 119 (1951), 7 U.S.C. §1461 (1958).

30 The House, on May 11, 1961 passed H.R. 2010 extending until December 31, 1963, without change, the Mexican farm labor program. 24 Congressional Quarterly Weekly Report 988 (1961).

31 H.R. 1968, 85th Cong., 2d Sess. (1958).

32 H.R. 4211, S. 1536, 84th Cong., 1st Sess. (1955); H.R. 1247, 86th Cong., 1st Sess. (1959).

33 S. 1127, 87th Cong., 1st Sess. (1961). A similar bill, H.R. 1247, 86th Cong., 1st Sess. (1959), was introduced in the previous session.

11. *Registration of Contractors and Crew Leaders.* Bills providing for the registration and control of migrant labor contractors and crew leaders have been introduced to cure the multitude of abuses existing between the workers and their supervisors.[34] None of these bills have been enacted.

12. *Recruitment of Migrant Farm Workers.* Several bills to allow the Department of Labor to inform migrants of employment conditions in areas where work is to be found have been introduced without success.[35] A recent bill would give the Secretary of Labor broad powers to "recruit, transport and distribute agricultural workers" in interstate commerce.[36] This measure would require the employer to meet minimum standards relating to conditions of em-

34 S. 17778, H.R. 5930, 86th Cong., 1st Sess. (1959); H.R. 11547, 86th Cong., 2d Sess. (1960); S. 1126, 87th Cong., 1st Sess. (1961).
35 H.R. 3856, 80th Cong., 1st Sess. (1947); S. 1456, 79th Cong., 1st Sess. (1945).
36 S. 1129, 87th Cong., 1st Sess. (1961).

ployment before being eligible to receive workers under the program. Other recent proposals would establish a National Citizens Council on Migratory Labor to report conditions and make recommendations to Congress and the President in the migrant labor area.[37]

## II. FEDERAL EXECUTIVE ACTION

By far the most effective action at the federal level to aid the migrant worker was the Resettlement Administration, created by executive order in the spring of 1935.[38] The Resettlement Administration, later known as the Farm Security Administration, remains the most successful federal effort in the migrant farm labor program. However, the effectiveness of this program in the field of migratory labor was ended in 1946 when the provisions for (1) the construction of sanitary camps for migrant families; (2) long-term, low-cost loans to give the migrant and marginal farmer an opportunity to buy sufficient land to become self-supporting; and (3) rural rehabilitation loans for the purchase of equipment, fertilizer and stock were abolished or substantially weakened to the extent that effective work was no longer possible.

Presidents Franklin Roosevelt, Truman and Eisenhower have all organized "President's Committees of Migratory Labor." Although no effective results in the way of legislation or executive action are directly attributable to these committees, an awareness of the problem at the national level has been created and may bear results in the future.

## III. COLORADO MIGRATORY LABOR PROGRAM

The domestic migratory worker may complain, on the state as well as the national level, that of all the forgotten men in our society "we are the forgottenest," and naively miss the point; on the contrary, he has been the conscious object of deliberate and skillfully drawn discrimination by a wide range of legislation and administrative procedures. Historically, it has been the pattern of state legislatures to exclude agricultural labor from the protection of workmen's compensation and occupational disease laws,[39] child labor laws,[40] unemployment security benefits,[41] wage claim protection,[42] and the guarantee of the right of workers to organize and bargain collectively.[43] This specific omission is due in part to the absence of any economic or political influence asserted by this submerged group upon their social bonds.[44] Thus, it is apparent that a strong public policy to exclude the migrant from social welfare legislation early evolved into the legislative scheme on the levels

37 S. 1132, 87th Cong., 1st Sess. (1961).

38 Later incorporated in the Bankhead-Jones Farm Tenant Act, 50 Stat. 522 (1937), 7 U.S.C. §§ 1009-29 (1958).

39 Agricultural labor excluded in Colo. Rev. Stat. § 81-2-6 (3) (1953).

40 "Nothing in this article shall be construed to prevent the employment of children in any fruit orchard, garden, field or farm . . . ." Colo. Rev. Stat. § 80-8-1 (1953).

41 Colo. Rev. Stat. § 82-1-3 (e)(i) provides: "The term 'employment' shall not include: Agricultural labor . . . ."

42 Colo. Rev. Stat. § 80-12-1 to 3 (1953). Farm labor is expressly excluded from the operation of this statute in Colo. Rev. Stat. § 80-1-3 (3) (c) (1953).

43 Colo. Rev. Stat. § 80-5-2 (3) (1953).

44 *Hearings on S. 1085, S. 2141, S. 1778 and S. 2498 before the Subcommittee on Migratory Labor of the Committee on Labor and Public Welfare, United States Senate*, 86th Cong., 2d Sess. pt. 2 at 812 (1960). [hereinafter cited as *Senate Hearings on Migratory Labor*].

of both national and state government. This policy, perpetuated under the influence of the state corporation farmer and the powerful grower associations, further engulfed the migrant—a pathetic figure in our democratic society who has become commonly characterized as the landless farmer, the voteless citizen and the voiceless stoic.

### A. *Initial Legislative History Concerning the Migratory Worker in Colorado*

The traditional national and state attitude towards the migrant agricultural worker has been one of exclusion from the usual protections afforded non-agricultural workers by our social welfare legislation. Departure by the Colorado General Assemblies from this philosophy has been a slow process. It is recent in origin and certainly less than dynamic in its impact upon the domestic migrant work force in the state.[45]

The first comprehensive study of migrant agricultural labor problems in Colorado was conducted by a Governor's Survey Committee on Migratory Labor and the Child Labor League in 1950-51.[46] No further overall official study was pursued until 1958, when the Governor appointed a migratory labor committee comprised of representatives of several state agencies.[47]

Legislative action pursuant to the recommendations advanced by the 1950-51 Governor's Committee on Migratory Labor was proposed in 1951,[48] in 1953,[49] and in 1955.[50] Briefly, this legislation proposed the creation of a Migratory Labor Board to prescribe and administer health, education and safety programs for the migrant worker. In none of the three sessions were the bills even printed.[51] No legislative action relating to migratory labor problems was presented to the 1957 Colorado General Assembly other than an ill-fated amendment to the ill-fated House Bill 402 providing for revision of the Industrial Commission's regulation of wage payments and wage claims. The proposed amendment was to include migrant agricultural labor contractors and crew leaders under the revised regulations. However, House Bill 202 passed in the House without the amendment (and the bill itself) died in the Senate Judiciary Committee.

45 The domestic agricultural work force is comprised of interstate (non-residents) and intrastate (Colorado residents commuting within the state) migrants totaling roughly 10,000 during the late season peak in 1959. In addition, approximately 3000 Mexican Nationals ("Braceros") were used in that year to complete the migratory farm labor. However, these totals are based on State Department of Employment estimates and do not include all workers and crews brought in by private contractors or all crews and workers travelling independently. See Colorado Legislative Council, Report to the Colorado General Assembly: Migratory Labor in Colorado, Research Publication No. 43, at p. X (1960) [hereinafter cited as Colorado Migratory Labor Report].

46 Colorado Migratory Labor Report at p. IX. The findings and recommendations of the committee are set forth in the *Senate Hearings on Migratory Labor* at 1499-1500.

47 This committee's functions were: "To consult with and advise the Governor and his staff regarding migrant labor problems; to act as liaison on behalf of the Governor of the State of Colorado with the President's Committee on Migratory Labor and with other State committees; to plan suitable programs of action and assist in their execution." Letter from Dr. Ruth Howard, Department of Health, to Miss Gwen Geach, Chief, Field Service Branch, Bureau of Labor Standards, U.S. Department of Labor, October 15, 1958, in *Senate Hearings on Migratory Labor at 1499.*

48 H.B. 137, 38th Gen. Ass., 1st Reg. Sess. (1951).

49 H.B. 401, 39th Gen. Ass., 1st Reg. Sess. (1953).

50 H.B. 114, 40th Gen. Ass., 1st Reg. Sess. (1955).

51 *Senate Hearings on Migratory Labor* at 1501.

Forerunner of the first legislative breakthrough of corrective legislation in the field of migratory farm labor was the introduction of House Bill 103 in the 1959 session of the Colorado legislature. This bill required crew leaders and labor contractors to keep payroll records and give wage statements to those migratory farm workers under their control. This bill passed in the House, but was indefinitely postponed by the Senate Agriculture Committee. However, House Bill 62, containing substantially the same provisions as the defeated House Bill 103, was passed by the General Assembly during the 1959 session.[52] Unfortunately, the act did not provide for registration of crew leaders and contractors; nor did it contain any other provisions to establish the central control necessary for effective administration of the act. The ineffectiveness of this legislation is reflected in the 1960 Migratory Labor Progress Report to the Colorado General Assembly:[53]

> Although the Industrial Commission has carried out an extensive information program and has attempted to contact labor contractors and crew leaders personally, only one . . . has been found thus far, who is subject to the provisions of House Bill 62. . . .
>
> While it appears that this legislation has fallen short of accomplishing its purposes . . . the Industrial Commission is of the opinion that at least another year's experience is necessary before a proper evaluation of House Bill 62 can be made.[54]

Thus, the initial ten-year history of the official migratory labor committee studies and ensuing legislative action programs has been informative but almost completely unproductive in alleviating the problems facing migrant workers in the state. Perhaps an explanation can be drawn from the text of the comment memorandum of the 1958 Colorado Committee on Migratory Labor submitted to the Hearings before the United States Senate Subcommittee on Migratory Labor:[55]

> The Committee has tended to avoid taking any action which might be construed as controversial. This policy has been followed to avoid alienating groups within the State whose cooperation is needed and to encourage improved relationships with other states.[56]

These study committees have, however, served a valuable purpose. They delimited local migrant labor problem areas and created an awareness in the state at large of a need for legislative action.

### B. *Citizen's Action Committees and the 1961 Colorado General Assembly*

One of the most valuable by-products of an official governmental study into the domestic migratory worker's problems has been the creation of local citizen's committees for legislative action. These committees, comprised of labor, civic, legislative, religious

52 Colo. Sess. Laws 1960, ch. 52.
53 Colorado Migratory Labor Report.
54 *Id.* at 18. The total registration under this act after the "one year's experience" is still one — a resident Spanish-American labor contractor.
55 *Senate Hearings on Migratory Labor* at 1499-1535.
56 *Id.* at 1506.

and welfare group representatives are organized in communities such as Greeley, Boulder and Denver. Legislative proposals (four in number, emanating from these committees were introduced in the 1961 session of the Colorado General Assembly. Passage of this legislation by the Forty-third General Assembly would have represented a long step toward admission of the Colorado migrant farm worker to first-class citizenship and a level of "parity," in legal rights and dignity with his brothers and sisters in non-agricultural industries.

1. *Senate Bill 281. A Bill Relating to the Transportation of Migrant Agricultural Workers.*[57] Under existing laws, the domestic migrant farm worker is protected in interstate transit only if motor carriers transport the worker for a total distance of more than seventy-five miles and such transport is across the boundary lines of any state, the District of Columbia, or territory of the United States.[58] The joint federal and state administration of these regulations has proved ineffectual, according to the officials of the Interstate Commerce Commission.[59] Compliance with the Commission regulations in Colorado has been avoided by altering the method of transportation—a shift to private buses, cars and station wagons. A Colorado State Patrol official's report to the 1958 Colorado Migratory Labor Committee indicated contact with fifty-two trucks transporting migrants in 1958, nine contacted in 1959 and only three in 1960.[60]

It is generally recognized that the states should consider enactment of generally uniform legislation in substantial conformity with Commerce Commission regulations. Senate Bill 281 would have adequately complied in both respects. It attempted to establish a minimal safety code for the operation of motor vehicles used in transporting migrant farm workers, consonant with the federal regulations. The bill provided for certain reasonable requirements with respect to the comfort of passengers, qualifications of operators, and safety of operation and equipment. The safety code was to be enforced and centrally controlled by inspection and certification at state ports of entry. Generally, the bill was less ambitious than

57 At least six states now have laws or regulations establishing safety measures for vehicles used in transporting migrant agricultural workers. U.S. Dep't of Labor, Status of Agricultural Workers Under State and Federal Labor Laws 5 (1960).
58 S. 3391, 84th Cong., 1st Sess. (1951), approved as Pub. L. 939 on August 3, 1956.
59 Colorado Migratory Labor Report at 16.
60 *Ibid.*

similar legislation passed in Oregon and California;[61] however, Bill 281 died on the floor of the Colorado Senate and has been tabled indefinitely.

2. *House Bill 414. A Bill Relating to Sanitary Conditions in Migrant Agricultural Labor Camps and Places of Employment.*[62] An annual federal grant from the U.S. Children's Bureau, slightly in excess of $40,000, has made medical services available to migrant farmworkers in Colorado since 1955.[63] This program is administered by the Department of Health through its Maternal and Child Health section. However, local health legislation extending protection to the migratory labor camps for controlling sanitation and housing conditions is not available. Apparently, the State Health Board and Department of Health possess statutory authorization to promulgate and enforce minimum sanitation and housing standards for migrant labor camps.[64] There is some doubt, however, whether compliance with health department regulations can be enforced in view of the Colorado Supreme Court's 1959 decision in *Casey v. People.*[65] In *Casey,* the court held that a violation of a local county health department regulation could not be made a misdemeanor; that such offenses must be spelled out by statute and not derived from regulations. However, House Bill 414 was not subject to the same constitutional objection because the statutory standards for minimum sanitation conditions in migrant labor camp and field areas were specifically set forth in the bill. In addition, violation of the sanitary code was not made a misdemeanor, but rather was made a ground for refusal of issuance of a camp permit or revocation of such permit by a closing order to abate the public nuisance. Provisions were inserted for appeal and judicial review to contest the reasonableness *vel non* of either enforcement procedure.

Generally, House Bill 414 would have applied only to migrant labor camps which were operated by persons engaged in the business of providing these facilities to the migrant and designed primarily to accommodate eight or more of these persons. The sanitation code provided for a safe supply of drinking water, toilet facilities, sewage and refuse disposal, and reasonably sanitary sleeping areas. The necessity for these minimal health measures is manifest. A 1951 Colorado study of 262 migrant families showed that half of the families' living quarters consisted of one room; thirteen percent had obviously unsafe water supplies; sixty percent had no bathing facilities; eighty-six percent had not seen a doctor for the preceding twelve months; only forty-two percent had received smallpox vaccinations; twenty percent received diphtheria and whooping cough immunization; and only ten percent had tetanus immunization. Infant mortality was twice as high in this group as the general

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61 See Ore. Rev. Stat. §§ 485.310-420 and § 485.990(2),(3) (1959). For California enactments see Cal. Labor Code §§ 1682.3, 1684, 1696.2, 1696.3, 1696.4 and 1699.

62 Twenty-three states have general laws or regulations which seem applicable to migrant agricultural labor camps. Op. *cit. supra* note 57, at 5.

63 Colorado Migratory Labor Report at 15.

64 Colo. Rev. Stat. § 66-1-8 (4) (1953) authorizes the State Board of Health to adopt rules and regulations, to issue orders, and establish standards, which it deems necessary to administer and enforce the public health laws of this state. Colo. Rev. Stat. § 66-1-7 (5) (1953) authorizes the Department of Health to establish and enforce minimum general sanitary standards pertaining to the quality of water supplied to the public and the quality of effluent sewerage systems. Colo. Rev. Stat. § 66-1-7 (13) (1953) authorizes the Department of Health to establish and enforce sanitary standards for the operation of industrial and labor camps. Colo. Rev. Stat. § 66-2-6 authorizes local county health departments to carry out state laws and regulations.

65 139 Colo. 89, 336 P.2d 308 (1959).

infant death rate for the state. One-third of the children born in the preceding five years had not been attended by a doctor.[66]

House Bill 414, designed to alleviate this unfortunate situation in our state, was killed in the House of the Forty-third General Assembly and has been postponed indefinitely.

3. *House Bill 396. A Bill Relating to the Regulation of Migrant Agricultural Labor Contractors and Crew Leaders.*[67] The evils which House Bill 396 were designed to correct are perhaps best summarized in this excerpt from the *New York Times Magazine:*

> [O]ne of the places they [migrants] need protection most is to curb the rapacity of the unscrupulous among their own crew leaders and labor contractors. These are the middlemen who link migrant and grower in a hiring system more susceptible to rackets than the outlawed shape up on the New York-New Jersey waterfront.
>
> The crew leaders yank themselves out of the migrant stream by their own will to succeed. Too often their success is built on kickbacks, jacked-up prices for food and liquor, and a monopoly over gambling, prostitution, and marihuana. . . .[68]

A poignant illustration is one crew leader in Pennsylvania, Raymond "Jacksonville Slim" Robison, who is Simon Legree, judge, jury and company store to his crew of 135. He attempted to serve also as prison guard until the FBI warned him that he could not force people into human bondage. During a seven day work period, Slim's crew earned $2,625. Of this sum, Slim's personal gross was $1,750—leaving $875 to be distributed among his 135 workers for the seven days' work. Through unlicensed dispensing of liquor and food at the camp's only store, at prices twice the going rate, most of the money earned by workers passed back to Slim.[69]

House Bill 396 was designed to extend protection both to the migrant farm worker and to the grower from the known abuses practiced by unscrupulous crew leaders and labor contractors. A certificate of registration and filing of certain employment information was required. A provision authorizing refusal to issue a certificate and suspension or revocation of the certificate for engaging in undesirable practices[70] (upon notice and hearing) was inserted to enforce compliance with the bill. A proviso for appeal from such enforcement action was made through provisions set forth in the Colorado Industrial Commission Act.[71]

House Bill 396 was introduced in the House, where it was amended to such a degree during floor debate that the legislator introducing the bill personally extended the motion to strike everything below the enacting clause. The motion was adopted and House Bill 396 also has been postponed indefinitely.

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66 *Senate Hearings on Migratory Labor* at 1804.

67 Eight states and Puerto Rico have legislation specifically designed for regulation of farm labor contractors. Six of these, California, Nevada, Oregon, Puerto Rico, Texas and Washington expressly require licenses, compliance with requirements relating to records, restrictions against certain undesirable practices and filing of bonds. *Op. cit. supra* note 57, at 4-5.

68 Raskin, *For 500,000, Still Tobacco Road,* N.Y. Times, April 24, 1960, § 6 (Magazine), p. 14. See generally, *Senate Hearings on Migratory Labor* at 958-60, 1481-89.

69 Pittsburg Post-Gazette, Sept. 5, 1960.

70 Misrepresentation in application for certificate, giving false information as to employment terms and conditions to workers, coercing kickbacks from workers, and sponsoring gambling, prostitution, and sale of narcotics and liquor on premises under his control.

71 Colo. Rev. Stat. §§ 80-1-39 to 49 (1953).

4. *House Bill 410. A Bill Relating To The Education of Migrant Children.*[72] This state's only significant migrant legislative development to date came with the passage of House Bill 410 in the 1961 session (discussed below).[73] In 1957 the federal government offered a three year migrant educational research grant of $36,100 to the Colorado Department of Education. Colorado was selected for this grant primarily because it was in the best position to administer the project, as manifested by the state's interest in a number of summer school programs operating prior to the date of grant.[74] Since 1955, the Colorado Department of Education has experimented with special summer sessions for migrant children, financed from the contingency fund of the state public school fund.[75] This was operated by local districts in the migrant areas. Six school programs were operating during the summer of 1960, offering six-week sessions in the Palisade, Rocky Ford, Wiggins, San Luis and Monte Vista districts, and there was a five-week session in the Ft. Lupton district.[76] A census of migrant children in Colorado was made for the first time in 1959, indicating a total of 6,200. Out of this number only 633 were enrolled during the regular school year. Five of the districts engaging in the pilot migrant summer school program have encouraged attendance of migrants during the regular session; however, as late as 1960, opposition was prevalent in the Ft. Lupton district on the ground that teaching and school facilities during the regular session were not sufficient to include migrant children.[77]

House Bill 410 provides for the education of migrant children during the regular session and for special summer sessions by those school districts intending to make application to the State Board of Education to participate in the program.[78] Classroom and supervisory formulas are specified to enable calculation of financial reimbursement to the district for the educational costs for each migrant child.[79] During House debate on the bill, the provision for enforcement against discrimination in admittance of migrant children to local school districts was deleted from the bill. Therefore, the success of the migrant education program under this act will largely depend upon the cooperation and spirit of local school districts in the migrant areas.

Education is not a panacea for elimination of the undesirable conditions facing the migrant; however, the introduction of a well-planned, financially sound program for the education of migrant children can only result in progress. Such a program is now possible in Colorado, assuming the cooperation of local school districts. This program should go a long way toward eliminating academic deficiencies and preparing the migrant for higher education or more skilled occupations. Perhaps its most important ramification will

72 Oregon, Ohio, New Jersey, New York, Idaho and Pennsylvania have legislative provisions for education of migrant children. *Senate Hearings on Migratory Labor* at 1521.

73 Colo. Sess. Laws 1961, ch. 223.

74 Colorado Migratory Labor Report at 13.

75 *Id.* at xi.

76 *Id.* This six-district project provided educational opportunities for 554 migrant children during the summer of 1959 and 700 in 1960.

77 School districts could also deny admittance to migrant children under the school residency requirements set forth in Colo. Rev. Stat. § 123-10-22 (1953). However, § 5(a) of H.B. 410 eliminates this problem by defining the residence for school purposes to be the school district where the migrant child is receiving shelter and the necessities of life.

78 Colo. Sess. Laws 1961, ch. 223, § 4 (2).

79 *Id.* at § 6.

be that of establishing a sense of acceptance—of belonging to the human race.

### C. *Summary*

The 1958 Committee on Migratory Labor's single specific recommendation to the Forty-third General Assembly was that a joint resolution be passed to continue migratory labor study.[80] This continued study program is presently being conducted with field and regional meetings in the five areas of the state where the greatest number of migrant workers are employed.

The people of the State of Colorado enjoy the benefits of an American standard of living, with practical abolishment of illiteracy and graduation from high school commonplace for every young American. However, there is no need for self-congratulation when a sizable segment of our population continues to lack many of the advantages which we now take for granted. A review of the legislative and migrant study programs discussed in this article leads one to conclude that a combination of the present rate of progress and the advent of agricultural automation[81] will precipitate the elimination of the migrant before the elimination of the migrant's problems.

## CONCLUSION

The domestic migratory farm worker is devoid of the political, economic and educational resources to improve his fortunes by his

80 Colorado Migratory Labor Report at 37.
81 *Id.* at 9. Farm mechanization in the harvest of sugar beets, certain vegetables and grains has been cited as the primary cause of the reduction of the interstate migratory work force in Colorado from 18,000 in 1950 to 7,000 in 1959.

own initiative. The present policy of local and federal governments is bottomed on the unfortunate combination of abysmal welfare standards and the potent political strength of a few who stand to lose by the improvement of the migrant's status. Only in the special circumstance, such as the Public Law 78 "Bracero" or Mexican National Program, is there federal protection for the migrant worker. Ironically, this program for protecting the foreign national migrant has only compounded the domestic migrant's plight by creating more unemployment and depressed wage scales. The floodgates of foreign farm laborers opened under the wartime stress of World War II and have remained open.[82] The whole program has been said to function like a transplant from "Alice in Wonderland."[83]

A consideration of the problems enumerated in this article indicates that migratory laborers and their families, citizens of the United States, do not enjoy the human rights and privileges which the General Assembly of the United Nations has declared should be a common standard of achievement for all nations and all peoples.[84] The prevalence of repressive, rather than progressive, legislation on both the federal and state levels is the aggregate product of a vast supply of cheap imported labor and the application of agricultural *laissez faire* policies in the fields of labor and socio-economic legislation. This is further complicated by the dreaded affliction labeled "cenatophobia"—the mortal fear of anything new.

Passage of the twelve-point federal program discussed in this article and revival and passage of the bills presented to the Forty-third General Assembly of the State of Colorado would at least afford a catalyst from which could flow many benefits of resurgent resources—not the least of which would be the achievement of social justice and ethical human relationships.

The reader will, of course, evaluate and answer the migrant farmworker problem on the basis of his own system of values; but for our part, we would adopt the answer extended by former Secretary of Labor Mitchell:

> The migrant problem will not be ignored, nor can people be led to ignore it. Our community will find ways to solve it, and by community I mean the community of citizens that make up America, citizens with wisdom and compassion and good sense, and citizens who save their final censure for those who stand by and seem unable to find within their economy a place for conscience.[85]

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82 In 1942, the total number of foreign workers admitted into the United States was 4,203; in 1959, more than a decade after the cessation of World War II hostilities, the total was 455,858. U.S. Dep't of Labor, Bureau of Employment Security, Farm Labor Service and Office of Program Review and Analysis, Farm Labor Market Development 15 (1960). Thus, if numbers were the only controlling factor, substantiation is afforded for the pronouncement of a placard over the Bracero sleeping quarters in Stockton, California: "Future Farmers of America." *Senate Hearings on Migratory Labor* at 1118.

83 In that, (1) its purpose is said to be to confine the Bracero workers to crops deemed essential by the Secretary of Agriculture, and (2) the Secretary of Agriculture has declared no commodities non-essential, with the result that approximately sixty percent of the Braceros work on crops in surplus supply — a surplus upon which the taxpayer is being charged millions of dollars for storage. N.Y. Times, April 24, 1960, § 6 (Magazine), p. 129, col. 2.

84 The Universal Declaration of Human Rights of 1948 declares that everyone is entitled to the rights and freedom of this declaration, without the distinction of race, creed, origin or other status. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment; to form and join trade unions for the protection of his interests; and to a standard of living adequate for the health and well-being of himself and his family. Articles 2, 23, and 25, Universal Declaration of Human Rights, Yearbook of the United Nations (1948-49).

85 *Supra* note 83.