



Justice at the Margins

CRLA attorneys assist migrant farmworkers from Mexico's indigenous communities. STORY AND PHOTOS BY **DAVID BACON**

Erasto Vasquez was surprised to see a forklift appear one morning outside his trailer near a rural crossroads in the grapevines southwest of Fresno. He and his neighbors pleaded with the driver, but to no avail. The forklift proceeded to uproot the fence Vasquez had built around his home and then lifted the side of a neighbor's trailer high into the air with its metal tines. The trailer groaned and tipped over, spilling the family's possessions.

"We were scared," Vasquez remembers. "I felt it shouldn't be happening, that it showed a complete lack of respect. But who was there to speak for us?"

Eight farmworker families lived in the tiny *colonia*, or settlement, on the ranch of Marjorie Bowen. The families had labored there for years. Their rented trailers weren't in great shape; cracks around the windows let in rain and the almost-constant dust, which contained the fertilizer and pesticides used on the vines. Some trailers also had holes in the floors. None had heat or air-conditioning.

Still, the trailers were home to these families. Vasquez had lived in his for 17 years. His youngest daughter, Edith, was

born while the family lived there. When the forklift came, she was in middle school and her brother Jaime was in high school; their sister Zoila had already graduated.

"Señora Bowen was a nice lady," says Vasquez, "and even though we had to make whatever repairs the trailers needed ourselves, sometimes she'd wait three or four months for the rent, if we hadn't been working."

But Bowen died in 2005. Her daughter, Patricia Mechling, inherited the ranch and wanted the trailers removed before she sold it. That September, she had sent the families letters, giving them 60 days to clear out. It was the picking season, however, when there are many more workers in the San Joaquin Valley than places for them to live. Vasquez's family couldn't find another home, nor could the others. They asked for an extension, but Mechling refused.

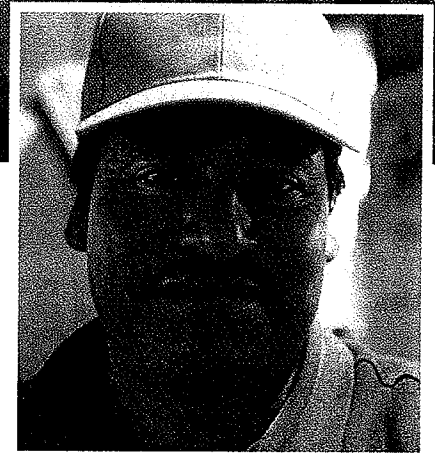
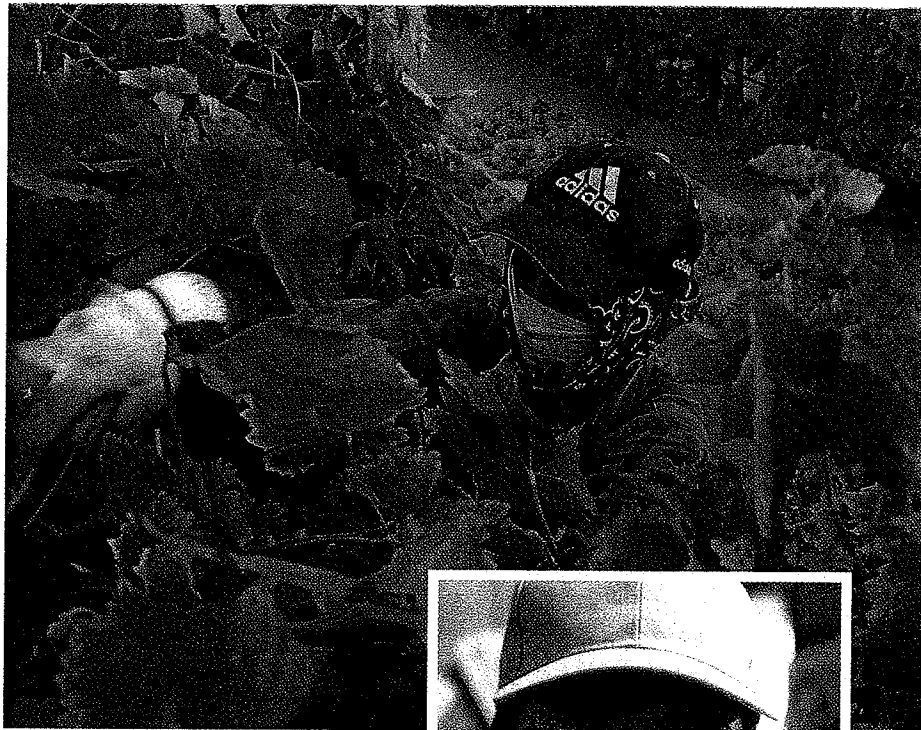
At the last moment, the farmworkers did find someone to speak for them: Irma Luna, a community outreach worker with

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California Rural Legal Assistance (CRLA). They had their first meeting at CRLA's Fresno office in November 2005. Luna and staff attorney Alegria De La Cruz say they informed their clients and Mechling's attorney of the legal requirements that must be followed before carrying out evictions. The attorney, James H. Vallis of Kingsburg, denies that Luna notified him she had met with Vasquez. Just days later, however, the forklift cut short the legal-eviction process.

"Destroying a trailer in front of the family that lived in it wasn't a reasonable or legal way to evict them," Luna says. "The families didn't really understand their rights. Many speak only Mixteco," a language indigenous to the southern Mexican state of Oaxaca.

The incident at Mechling's ranch illustrates the ongoing need for legal services for some of California's poorest



OPPOSITE: This broken-down trailer near Kerman was home to Alejandro Mendez and his wife when their daughter was born (2006). TOP: Vaselia Valdez, a farmworker from Michoacan, Mexico, travels nearly 100 miles daily to pick grapes near Raisin City (2006). MIDDLE: The CRLA helped Mixtec immigrant Erasto Vasquez sue the landlord of his *colonia* near Fresno for illegal eviction (2008). LEFT: Triqui farmworkers from Oaxaca gather to learn about their rights at a Selma apartment where ten migrants live (2006).

families, and it highlights the challenges legal-aid providers face as the demographics of the state's farmworker population change. CRLA has created an innovative program to meet some of these challenges. But the agency's staff and leaders in the indigenous community contend that a rethinking of U.S. immigration policy also is needed.

De La Cruz and attorneys from Fresno's Wagner & Jones, who provided pro bono co-counseling in the case, filed suit against Mechling in August 2006, alleging she'd committed violations of the Civil Code to get the families to move out (*Vasquez*

v. Mechling, No. 06-CECG-02645, Fresno Super. Ct.). De La Cruz also alleged the families were evicted in retaliation for complaints they had made about substandard living conditions. Mechling's attorney, Vallis, called the suit "a shakedown." The day before trial, it settled for \$55,500—compensation for destroyed belongings, rent abatement, withheld security deposits, and emotional suffering. Mechling has since sold the property.

Seven of the eight families who were living in the *colonia* came from San Miguel Cuevas, a tiny town in the mountains of Oaxaca. And although speaking only Mixteco created great

BATTLING THE LSC

In 1996 the Republican-led Congress imposed new restrictions on legal-services providers that are funded by the nonprofit Legal Services Corporation (LSC) in Washington, D.C. Recipients cannot initiate or participate in class actions, collect attorneys fees from adverse parties, or represent certain aliens. (See 45 C.F.R. § 1617.3 (class actions); § 1642.1 (attorneys fees); and § 1626.3 (illegal aliens).) In response, California Rural Legal Assistance (CRLA) found private counsel to take over more than 100 of its active cases, including a significant number of class actions.

CRLA now cooperates much more extensively with private lawyers, far beyond the legal requirement to use 12.5 percent of its resources to do so. Because private counsel may collect attorneys fees, this cooperation means that many defendants face a potentially significant expense. And private lawyers, unlike those at CRLA, are able to represent undocumented clients.

"Our relationships with private counsel are critical," says Jose R. Padilla, CRLA's executive director. "Not only can they represent individuals where we are barred, they also can ensure that farmworkers and the poor continue to have access to quality litigation."

Padilla continues, "So long as CRLA doesn't directly represent any ineligible immigrants, it can participate in litigation that might benefit both eligible and ineligible case members." (See 45 C.F.R. § 1626.2(e).)

By keeping strictly to the letter of the regulations, CRLA held its critics at bay for more than a decade. Early in 2000, however, CRLA began filing complaints against powerful dairy interests in the Central Valley, settling one of its many cases on behalf of dairy workers for \$475,000 (*Luis Lopez Tomayo v. Paul Souza Company*, No. 06-220770 (Tulare County Super. Ct.)). The first of several federal investigations of CRLA began later that year at the request of some members of Congress from rural California.

In 2006 the LSC issued a report, sought by U.S. Rep. Devin Nunes (R-Visalia), finding "substantial evidence that CRLA has violated federal law" by engaging in conduct prohibited by funding restrictions. Last year Kirt West, outgoing LSC inspector general, issued a subpoena demanding 33 months of data on 39,000 clients to determine if CRLA "disproportionately focuses its resources on farmworker and Latino work." CRLA refused to comply with the subpoena, Padilla says, "because California law protects clients and their confidentiality." The case has been fully briefed and is awaiting either the scheduling of a hearing or a decision (*United States and Kirt West v. CRLA*, No. 07-MC-01239 (D.D.C.)).

"The office of inspector general can make no conceivable use of the 39,000 client names and their spouse names it is seeking," says Marty Glick, a partner at San Francisco's Howard Rice Nemerovski Canady Falk & Rabkin who represents CRLA. "It refuses to say why it wants or needs them. It is also demanding access to privileged and work-product memoranda and documents. One has to wonder what the purpose is. Why is the effort to give people redress for the failure to pay legal wages or overtime so controversial?"

In 2007 the LSC limited CRLA's funding to a month-to-month basis, but in 2008 the restrictions were relaxed to a six-month cycle. "But there's no end in sight," Padilla says. "The message we get is that CRLA should change the way it advocates for low-wage and Latino workers. We're being punished for protecting our clients."

difficulty for them in understanding the legal proceedings, their strong cultural traditions promote a powerful sense of community. For instance, while the case was pending, Vasquez was elected in absentia as San Miguel's *sindico*, or trustee, a person who takes care of the injured and makes funeral arrangements for those who die. To fulfill this *tequio*, or duty, he returned to Oaxaca for a year. When Vasquez was required to give a deposition, Luna appealed to his sense of collective responsibility, and he returned to Fresno, spending \$600 for the trip at a time when he wasn't working. "I wanted the landlord and lawyer to pay for what they'd done, so that they'd feel what we felt," Vasquez says. "I was also the one who convinced the other families that we had to do something."

Twenty or 30 years ago California's farmworkers came from parts of Mexico with a large Spanish-language presence, but migrants today come increasingly from indigenous communities there. Rufino Dominguez, coordinator of the Binational Front of Indigenous Organizations (FIOB), says about 500,000 indigenous people from Oaxaca now live in the United States, 300,000 of them in California. "There are no jobs [in Oaxaca], and NAFTA [the North American Free Trade Agreement] made the price of [Mexican] corn so low that it's not economically possible to plant a crop anymore," Dominguez says. "We come to the U.S. to work because we can't get a price for our product at home. There's no alternative."

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These and other economic changes are uprooting and displacing communities in Mexico's most remote areas, where people still speak languages that were old when Columbus arrived in the Americas. In 2006, increasing poverty, and demands for jobs and higher living standards, ignited months of civil unrest in Oaxaca. Strikes and demonstrations were met with repression by an unpopular government. According to Leoncio Vasquez, an FIOB activist in Fresno, "The lack of human rights itself is a factor contributing to migration from Oaxaca, since it closes off our ability to call for any change."

Dominguez estimates that 75 percent of the indigenous migrants from southern Mexico who arrive in California have no immigration visas—up from about 50 percent a decade ago. "A few of us benefited from the immigration amnesty in 1986, but not many," he says. "The reality is, there are no visas available in Mexico to come here, so even though it's harder,



A tiny house on a Kerman ranch houses the family of Marcelina Lopez, a Mixtec from Oaxaca. They pick crops in the Fresno area (2007).

more expensive, and more dangerous than ever to cross the border, many people still come because their need is so great. Neither the U.S. nor the Mexican government will look at the root cause of migration.”

For CRLA, providing legal services to indigenous migrants is complicated by the large percentage who are undocumented—and by restrictions on the \$7.2 million it receives from the Legal Services Corporation (LSC) in Washington, D.C. “Immigration status has always been a criterion for eligibility to receive funds from the LSC,” says Jose R. Padilla, CRLA’s San Francisco-based executive director. “But until 1996, the law didn’t restrict the use of *other* funds for that purpose. That year, however, Congress said that if we receive even \$1 in federal funding, we can’t represent undocumented people. The same legislation prohibited us from collecting attorneys fees, and from filing class actions.” (See “Battling the LSC,” page 32.)

The new rules hit CRLA especially hard because it had started to reach out to indigenous communities just a few years before. In the late 1980s the agency opened an office in Oceanside, north of San Diego, “because we found people living in the bushes, in open country, ravines, and canyons,” Padilla recalls. “We began to understand that the people living in these extreme conditions came from a different part of Mexico. Although we’ve always had bilingual outreach workers, here we found people with an indigenous language and culture we weren’t prepared to serve.”

At the same time, migrants from the indigenous communities complained that CRLA was not responding to their needs. Members of a network of Mixtec and Zapotec organizations met with Claudia E. Smith, who headed CRLA’s office in Oceanside, and eventually with Padilla and other staff attorneys. As a result of those meetings, CRLA hired Dominguez as its first indigenous outreach worker.

“We began to work on the basic problems of our communities,” Dominguez recalls. “When we went out to the fields, we often found no bathrooms or drinking water. Some people were working with the short-handled hoe [prohibited by state law], or weren’t getting paid and had no rest breaks. Many people were living outside, or in unclean housing in bad condition. So we held workshops in homes and fields, and got [information] on the radio.”

At first Dominguez and Arturo Gonzalez, a second Mixteco-speaking outreach worker, traveled to indigenous communities in California to educate people about their rights. As that knowledge spread, complaints about living and working conditions began to surface. At the Griffith-Ives Ranch in Ventura County, for example, two Mixtecs tunneled out under fences that held laborers in virtual peonage, going first to the Mexican consulate and then to CRLA. With the assistance of

Munger, Tolles & Olson in Los Angeles, CRLA lawyers filed suit in federal court alleging enslavement as well as violations of the Agricultural Worker Protection Act and the RICO Act (*Carillo v. Griffith-Ives*, No. 90-CV-3153-TJH (C.D. Cal.)). The case settled in 1993. Eventually, Edwin M. Ives of Los Angeles, owner of the flower ranch, pleaded guilty to RICO charges in a related criminal prosecution—the first organized-crime conviction in a civil rights case. Ives also agreed to pay \$1.5 million in back wages to about 300 former workers.

Outside of Fresno in the late '90s, a group of 32 Mixtec families were found living in a trailer park located on an old toxic waste dump that had been declared a Superfund site. Dominguez began an investigation, which Luna completed when she, too, was hired as an indigenous-outreach worker. After negotiations among CRLA, Chevron Corp., and the Environmental Protection Agency, Chevron paid to relocate the families in new homes in a community called Casa San Miguel, named after their hometown in Oaxaca.

In 2003 CRLA investigated complaints that farmworker families near Weedpatch had been exposed to chloropicrin, a toxic pesticide, when an onion field was sprayed with it. The subsequent lawsuit—and eventual settlement—required indigenous-outreach worker Fausto Sanchez to provide 167 clients an understanding in Mixteco of a complex legal case that had lasted for three years.

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“Relations between CRLA and the FIOB were difficult at first,” Dominguez says. “Some [CRLA] people said they didn’t need us, or complained about our work. But we have a very close relationship now, and each [organization] recognizes the importance of the other.” CRLA currently has six Mixteco-speaking outreach workers in offices around the state. All collaborate with the FIOB. One of them, Antonio Flores, helped start a separate organization, the Mixteco/Indigena Community Organizing Project in Oxnard, and he currently heads Educación y Apoyo para Las Comunidades Indigenas in Ventura County. In 2006, CRLA hired Mariano Alvarez, its first indigenous-outreach worker from Oaxaca’s Triqui community.

“We respect our differences, because it’s good for us,” Dominguez says. “When we work together, we have a greater impact.” Adds Jeffrey T. Ponting, directing attorney of CRLA’s Oxnard Migrant Farmworker Project and codirector of its

Indigenous Farmworker Project, “We’ve become an example to other legal-aid organizations. We employ more indigenous people than the state and federal governments combined—which indicates their lack of commitment to providing services to a growing and important community.”

Predictably, CRLA’s representation of farmworkers generates opposition from growers. “There are always employers who will not respect the basic labor rights of their workforce [for] minimum wage, overtime, or rest periods,” Padilla says. “We do more employment work—about 16 to 20 percent of our cases—than 99 percent of legal-service organizations, where the average is 2 percent.”

For the indigenous communities, CRLA’s inability to represent undocumented people can be frustrating. “The prohibition doesn’t change the conditions that uproot our communities and turn us into migrants,” Dominguez says. “But ranchers know there’s no one to defend us. People decide not to file complaints because they’re afraid, and bosses sometimes use undocumented status to threaten workers if they try. In some places, just walking on the streets is dangerous if you have no papers.”

Some members of Congress argue that strict enforcement of employer sanctions for hiring undocumented workers would foreclose the potential for abuse. If migrants without visas were forced to leave the country, the logic goes, then the growers would have to hire less-vulnerable farmworkers. Dominguez responds, “That won’t stop migration either, since it doesn’t deal with why people come.”

“We know the law,” Padilla says. “But whatever workforce is in the fields should have basic rights.” CRLA and most labor unions support putting more government resources into enforcing labor standards for all workers. “Otherwise, wages will be depressed in a race to the bottom,” he says. “If one grower has an advantage, others will seek the same thing.”

Others in Congress—and some California growers—have called for relaxing the requirements for guest-worker visas. Under the current H2-A program, growers can recruit agricultural workers on temporary visas only for up to a year. The visa cannot be transferred from one employer to another. And although there are minimum-wage and housing requirements, a recent report by the Southern Poverty Law Center, *Close to Slavery: Guest Worker Programs in the United States*, documents extensive abuses under the system.

“The governments of Mexico and the U.S. are both dependent on the cheap labor of Mexicans,” Dominguez says. “They don’t say so openly, but they are. What would improve our situation is legal status for the people already here, and greater availability of visas based on family reunification. Legalization and more visas would resolve a lot of problems—not all, but it would be a big step.”

In the meantime, says Mixtec farmworker Vasquez, his community will continue to rely on CRLA and advocates such as Luna. “It’s important to have someone like Inma.” **BL**