

**UNITED STATES COMMISSION
ON CIVIL RIGHTS**

**BRIEFING REGARDING
THE STATUS OF LEGAL SERVICES
AND
THE IMPACTS ON CIVIL RIGHTS**

Testimony from

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Mohandas Gandhi would always say that when you have doubts about decisions you must make, the "expediency" is to remember "the face of the poorest and most helpless [person] you have ever seen and ask yourself if the step you contemplate is going to be of any use to him...Then you will find your doubts...melting away."

PERSONAL BACKGROUND

I know the face of rural California. In some respects I am the past and emerging face of rural California. I was born and raised in a rural small town, designed with a railroad track as a social and economic demarcation. And I was raised by Citizen parents who came from immigrant families and raised by a rural village, so to speak, surrounded by "aliens" who I referred to as "abuelita", and "tia" and "tio"- grandmother, aunt and uncle. My father was a farm worker until his mid 20's and a man who gained his Citizenship by fighting for his country in World War II. He still believes in democracy. In his early 70's, he still serves on a rural school board that I sued as a legal aid lawyer some years ago just as he was joining it..

I have given 18 years of a legal career to rural legal services because, first, I remember what it is to pick tomatoes in 100 degree weather, and second, because (until my death), I will believe in certain things that brought me to rural legal aid - among these social learnings, three: (1) that working hard in employment that provides minimal dignity, should entitle you to some basic labor, civil and human rights (by "human rights" I do not mean some esoteric notion of international implication but something very basic like *human* respect and respect for human life (2) I agree with the famed jurist Learned Hand that a democracy is threatened when its most cherished precepts are compromised i.e. when Justice itself is rationed; (3) I disagree with any notion that wealth and privilege must dictate the manner in which the country is governed and, thereby, the day-to-day lives of citizens in poverty not only fail to be free but suffer incredibly.

I. LEGAL AID AND CIVIL RIGHTS REPRESENTATION.

Before I share client reasons why we do “civil rights” work, I make three points: (1) that traditional civil rights work is legal aid work, but that it has come at a price; (2) that such work is a very small aspect of the overall utilization of our resources; (3) that the basic issue of legal aid access is, itself, a civil rights issue.

A. TRADITIONAL CIVIL RIGHTS WORK IN RURAL LEGAL AID HAS BEEN SIGNIFICANT BUT ONE PRICE FOR THE EXISTENCE OF LEGAL AID HAS BEEN AND CONTINUES TO BE THE CURTAILMENT OF CIVIL RIGHTS REMEDIES.

The mistake of many who judge the purpose for providing free civil legal aid to the poor is that they judge such a system's value through a political prism that believes access to the law must be apolitical, non-controversial (does not challenge the wielders of political influence), color-blind, and unworthy of being free in legal scope, all, because its fund source emanates from governmental taxing power.

In truth, poverty is political. Through its ability to create or undo policy, government can ameliorate or enhance the very nature of poverty as it beats on the lives of the poor.

But for legal aid to exist, the political price has been for its civil rights defense capability to be sacrificed. Because most legal aid organizations have not aggressively used civil rights issues in affirmative strategies to assist specific client constituencies, the minority who have are vulnerable to the reforms that cut at the margins of their most effective service; but it is at the margins where the controversy is defined. It is the politician and the influential constituents who are the first to attack legal aid for efforts to make voting procedures equitable or to attack legal aid for bringing farm worker class actions even though the latter attack the most egregious work conditions in the country including peonage. The most recent example- Texas Rural Legal Aid has suffered a tremendous political backlash for bringing a Latino voting rights case well within the regulations set by the Legal Services Corporation. Ironically, the case was abandoned a short time before the plaintiffs were victorious.

Were I to encapsulate in one sentence, my 18 year experience regarding legal aid and civil rights protections, it would be that for the ethnic poor, legal aid lawyering has suffered a continual erosion of its ability to address the issues at the heart of civil rights work. From the onset, with the enactment of the Legal Services Act of 1974, school desegregation was excluded from the issues legal aid could address. Since then, electoral redistricting has fallen victim. The most effective and symbolic procedural means for effectuating civil rights remedies- the class action- went that way in last year's LSC regulatory reforms. And the human rights protections for those who reside and labor cheaply in this country without benefit of immigration status or with a politically vulnerable albeit legal status- those defenses have virtually gone as well with the elimination of class action litigation.

Public Misconception: Legal Aid Is Color-Blind. Most persons who think about the practice of civil rights law will not relate such a practice to the legal aid system in this country. In that regard, most legal aid organizations implicitly pursue “color blind” strategies in their decisions to prioritize resources. The traditional civil rights issues are left to the civil rights groups maintaining the history that has excluded some of these issues as a way of compromising legal services into existence. Perhaps that may be easy for urban based legal aid programs who find strong civil rights networks addressing urban civil rights problems, but that is the opposite for rural legal service programs. Even then, the resources for civil rights law groups are not extraordinary. Until last year, CRLA had more lawyers within California than MALDEF had throughout the country.

In summary, when the general public thinks of civil rights cases, they will think that it is all done by the non-legal aid organizations such as the NAACP (National Association for the Advancement of Colored People), the Mexican American Legal Defense and Education Fund (MALDEF), AALDF and the Lawyers Committee on Civil Rights. This is not the case for rural legal aid in California.

Intersection of Race and Poverty. Even legal aid providers and civil rights advocates think this way. There are current writers on the subject who articulate that the fight for civil rights and the fight by legal service advocates to ameliorate the impacts of poverty are two trains that pass each other by the night.¹ An argument is that the ethnic community, especially the urban minority poor, has been ill served by the legal service community at the same time that the fight for racial equality by the civil rights community has not adequately addressed problems of the ethnic poor. Both miss the picture because when they prioritize their resources, they fail to understand the special needs found at the “intersection of race and poverty”. Bluntly put, the myth in the public mind is that the civil rights legal organizations serve the minorities and the legal service lawyers serve the poor. That is not the CRLA experience as a rural legal aid provider.

In Representing Ethnic Poor CRLA Has always Used Civil Rights Remedies But Out of Necessity. In rural California, there is no civil rights infrastructure that brings the resources of these groups to bear on the civil rights of the rural poor nor of rural ethnic communities. Although such civil rights groups may be approached to represent the rural ethnic poor on an ad hoc basis, their institutional focus (for reasons of history and resource efficiency) is urban. These groups not only do not have the resources to reach out to these communities, they do not have the local presence to maintain ongoing, day to day relationships that allow them to stay in touch with changing needs that come from changing demographics and economic conditions.

CRLA is the NAACP, the MALDEF, and the Lawyers Committee of rural California. CRLA filled the void out of necessity.

¹See John A. Powell, *Race and Poverty: A new focus for Legal Services*, Clearinghouse Review (Special Issue 1993), pp. 299-309.

California rural poverty is now majority ethnic. So that if a legal aid provider is in tune with the daily and real injustices these communities bear, you necessarily must bring race, national origin or gender-based litigation, representing classes of persons as they are mistreated in their work or housing environment. CRLA's poverty community of some 310,000 is also diversified. If case service statistics reflect the representative distribution of ethnic groups within CRLA's service area, then the CRLA service area has some 150,000 Latino poor; 120,000 white poor; 20-25,000 Asian/ Pacific Islander poor; 15-20,000 African American poor. Whereas white poor need basic legal aid, ethnic rural poor need both civil rights protection as well as representation in the traditional services legal aids are known to provide.

In the 30 years of rich CRLA history, CRLA lawyers have brought every kind of civil rights case that could be found in a rural setting. The work has addressed such issues as English literacy in voting; voting rights for non landowners; school district at large electoral challenges; police misconduct; prison conditions; employment discrimination on the basis of race, sex and national origin; sexual discrimination; sexual harassment in agriculture; environmental racism in Latino towns; affirmative action; education rights of immigrant and limited English speaking children, including bilingual education; statewide, class wide welfare reform; and (at the turn of the 21st Century) labor peonage. This came about not because we sought to be called civil rights lawyers, but because in small towns (and not so small towns) of California "mexican and black folk" of the east sides never got the same life break as white folk. Rural racism was never color blind.

I grew up with and was raised by victims of racism. In the Imperial Valley, where my uncle Ysidro Real worked for the United States government experimental station in the 50's and 60's, the Imperial Irrigation District (the county's largest employer and the system that fed water to the crops he tended) would not hire Mexican laborers like him nor hire Black workers. Yet, as a young rural lawyer in 1980, I oversaw a consent decree that had corrected the injustice.² Whereas the IID workforce once been 15% minority in a 50% minority county, I reviewed figures showing a 60% minority workforce or more than 400-plus IID minority workers now employed making non-poverty wages and no longer eligible for our services. 400 families out of poverty. And there was no MALDEF nor NAACP lawyer to bring that case. CRLA was the NAACP and MAPA (Mexican American Political Association) lawyer.

B. BUT IN OVERALL THRUST, LEGAL SERVICES IS NOT ABOUT CIVIL RIGHT LITIGATION BUT ABOUT REMEDYING BASIC POVERTY CONDITIONS.

Opponents to legal aid call civil rights work "social engineering". But in reality, legal service (even CRLA's) is an individual or family oriented service that goes to helping maintain what most would consider "basics of living"- a roof over a family's head and food on the table. Most legal aids, including CRLA, provide most of its client services in the form of counsel, advice,

² NAACP et al. v. Imperial Irrigation District.

and other brief service. In 1996 this represented 11,976 matters or 60% of our work. In national legal service, less than 10% of the cases result in litigation that ends in a court decision with the majority in family law.³ CRLA will settle or litigate to court decision closer to 5% of its cases and does less family law than most; CRLA family law matters number more than civil rights matters.

Of CRLA's 1996 work (case matters) 33% (6646) were in **housing**; 18% (3557) in **labor**; and 7% (1362) in **civil rights** related work, most of the latter in the area of citizenship.

But most relevant is that in the early part of 1996, during the process of class action abandonments, of the some 5000 active cases CRLA had identified in the relevant time period, 40 were class actions or about ½ of 1%!

C. MINIMUM ACCESS TO LEGAL AID IS A CIVIL RIGHTS ISSUE: INACCESSIBLE LEGAL ASSISTANCE IS A RATIONING OF JUSTICE.

Access to civil rights protections is itself a civil rights issue. The poorest members of an ethnic community are the most vulnerable to civil right violations because they lack the education, sometimes the social standing to know and to feel entitled (as a productive person) to their basic legal rights. Immigrants are the most vulnerable to civil and human rights violations for the same reason but also because they live in fear of losing a vulnerable immigrant status or fear discovery if not properly documented. Even if legally in the country some immigrants will not fathom that "government" would seek to enforce those civil and other rights that government enacts. In their native countries, such may not be a function of government in either theory or practice.

Therefore, to the extent legal aid is unavailable to an ethnic community's poor, both civil rights and basic legal rights will go unprotected. The decline of lawyers in legal services shows an increasing disparity between the poor and the general American population.

³ Legal aid is about "family maintenance"- child custody, spousal abuse, child support, child abuse, child neglect, children's education. In 1994, LSC statistics indicated more than 50,000 child support matters; 52,000 spousal protection cases; more than 250,000 divorces. Sometimes marital separation is necessary to help create a better situation for children, to allow one spouse to escape the abuse of another, and sometimes the only way to keep a family from starving i.e. divorce to meet a condition for obtaining public benefits.

The Legal Services Corporation published a report in 1993 indicating that whereas

- the general public averaged 1 attorney per 305 persons,
- poor people had 1 attorney per 10,567.⁴

In dramatic contrast, the rural poor in CRLA service areas had in 1997:

- 1 attorney per 16,000 poor persons (average)
- and farm workers 1: 30,000!

With the loss of 15 attorneys in 1996, CRLA 1-attorney offices have 1 attorney: per 29,041 (**Santa Rosa**); per 26,369 (**San Luis Obispo**); per 25,517 (**El Centro**); per 22,891 (**Marysville**); per 20,794 (**Santa Maria**). CRLA now has eight 1-lawyer offices.

II. THE FACES OF LEGAL AID CLIENTS

I cannot speak about the implications of legal services changes on the civil rights of low-income persons without thinking that “civil rights” belong to people, with Gandhian helpless faces, with families, who carry with them esoteric beliefs such as hope and faith not unlike any other American seeking to secure and pursue democratic happiness.

Class Actions, Aliens and Welfare Reform. As I look at the recent changes affecting the Federal funding of legal services, the restrictions on the nature of our practice have been as devastating as the loss of advocates. If CRLA now has 15 fewer lawyers than it did one year ago, why do we need to do restricted work? If so much need is unmet, (you ask) why do you want to represent clients regarding **welfare reform**? If other civil rights groups exist, why should you be in the business of civil rights **class actions**? Why do a class action, if you can do 50 evictions using the same time and resources? If people are not here legally, or if there are too many “**aliens**” (legal or not), why represent them when there are so many people with citizenship who need the services? I will continue to use the word “aliens” as I end because as much as I am angered by its derisive usage, it is the choice of word used by our detractors and I use it to remind me of the underlying hatred or insensitivity reflected there- despite the simple fact that these are fellow human beings.

Were Mohandas Gandhi before you today, he would ask you to recall those helpless faces... children or mothers or workers... so that you could remove the doubt about the “why?”

⁴ **Legal Services: The Unmet Promise**, The National Legal Aid & Defender Association, (1993), at p.10.

○ WHY DO WELFARE REFORM?

If we could, we would challenge welfare reform because there are people named **Ignacio Muñoz**, a 75-year old worker in Stockton (in the Central Valley of California), who had labored for more than 40 years picking crops and doing other jobs. Fearing deportation and loss of his \$400 SSI check, he took his fear to the illogical extreme- and seven weeks ago “hobbled over to a nearby bridge, slipped into a dry canal bed” and shot the fear out of his head.⁵ No legal aid litigation will bring back an aged, spent and lifeless brother. And we know that politicians looking for confirmation of such suicides will not find any, lest they be asked to account for the tragedy. But “fear and panic and heart attack” is not a humane way to treat the elderly and the infirm- whether they are here as refugee transplants or retired workers who walk on spent arthritic legs because the strength was left in the furrows of fruit fields.

○ WHY FILE CLASS ACTIONS?

If so much need is unmet, why does CRLA want to file class actions? Although class actions represent less than 1% of our case work, the violations are the most egregious. And some cases generally cannot be brought without a class action strategy because of the numerosity of the victims. But beyond that, we do class actions because there are women named **Lydia Hernandez**.⁶ Until recently, she had the life role of bottling “the world's supply of A-1 Steak Sauce and Grey Poupon mustard.” She had worked there for more than 25 years.

In 1995, dozens of Latina workers on the line, challenged that Nabisco management had “unduly restricted their restroom privileges.” Latina working women may not have glamorous jobs, but “respect”, as a family and cultural value, stands for something. Ms. Hernandez and her fellow workers filed suit claiming that their work supervisors had denied her and her fellow class members the decency of providing bathroom breaks. Many began to develop urinary tract and bladder infections. And many of the women began to wear diapers on the line like children, so that their bathroom needs would not interfere with the employer work expectations. Many of these women were in their 50's and 60's. The settlement was confidential. The Chicago labor law firm of Davis, Miner & Galland that served as lead and co-counsel made it clear that, but for the local, neighborhood office presence of CRLA, such litigation could not have been maintained without the client support that we provided.

⁵ See Susan Ferriss, *Panic Sets in Over Severing of Benefits*, San Francisco Examiner, April 27, 1997, at B-1.

⁶ Hernandez et al. v. Nabisco. See also Fred Alvarez, *Employees, Nabisco Settle Lawsuit Over Work Rules*, Los Angeles Times, April 15, 1996, at B-1.

○ WHY REPRESENT “ALIENS”?

For the African American on which the civil rights model is based, the inequalities are race-based. For Latinos, there are at least two added dimensions- language rights and human rights based on the immigrant status. We represent “aliens” because there are workers named **Noel Juarez**, a Zapotec Indian from Sierra Anna Yareni, Oaxaca, who came from the highlands of southern Mexico (one of Mexico's poorest states) where the Indian culture (as here with ethnic groups) is the subject of derision. Noel was like many who come prepared to bear whatever personal sacrifice to be able to send money from their labor to families back home; but few expect that in the modern American democracy, basic human rights mean little.

SOMIS RANCH PEONAGE. CRLA, some 4 years ago (October 1993) closed a class action litigation where Mr. Juarez and 377 workers had not been paid back wages, some \$1.25million (\$1.5 million in restitution) working 6 day weeks, 16 hour days, below Federal minimum wage (\$3.35 per hour at the time).⁷ The dramatic impact was the incarceration of the grower for criminal violations (e.g. racketeering, conspiracy ,labor and immigration violations) that amounted to three years in prison. Your “baby's breath” could have come from this farm. Ornamental flowers don't look quite as pretty when they are picked by workers who live in a 50-acre compound, surrounded by high, barbed fences, live behind locked gates, secured by “attack dogs”. Some workers told stories of having their heads shaved so that the humiliation would keep them from escaping into surrounding communities to ask for assistance. There was no MALDEF because they were not Latino. There was no Amnesty International because this is the United States. There was only rural legal aid to raise our standard of treating farm workers to a level of basic human decency that removed the total employer-worker dominance that once was called “slavery”.

○ “ALIENS”, CLASS ACTIONS and LABOR CAMPS.

In many labor camp cases, class actions become necessary, again, because of the large number of affected families. And in most of these, you find immigrant families- some family members legal, others not, many times a mix of both in the same families. These families live in camps they call “home”and to which they give foreign sounding names like *San Andreas*, *El Rio*, or *El Pirul*.

Labor camp conditions when brought to light at trial are very difficult to accept. In the *San Andreas* 4-week trial, one client, **Antonia Rocha** took the stand a year and a half ago (August,

⁷ Carrillo et al. v. Griffith-Ives. See also Julie Fields, *5 Former Ives' Laborers Get Checks For Back Wages*, Los Angeles Times (West County Edition), October 19, 1993, at B-1.

1995) and “described the living conditions she and other fellow tenants faced.⁸ 'When we were cooking, cockroaches would fall from above us and into the food and we couldn't eat it anymore. We'd get nauseous and throw it out.'” and “**Celia Hernandez** cried [on the stand] when she talked about how she had to take her son, now 5, to the emergency room for treatment of asthma attacks”... and doctors would later tell her that the cause was “the dust and humidity” of the labor camp. She moved and her child’s health improved.

Remember the Children. But I choose to end with a very short letter because, as you might expect, we also represent immigrant families in litigation⁹ because of children with “alien” names like **Hilda** and who, some times take 15 minutes from their busy lives to write to their lawyers. And lawyers always need to be reminded with simple reasons about why *we* do what we do. I would read it in Spanish as she wrote it but you wouldn't understand. But I exempt Justice Cruz Reynoso from that statement. Hilda wrote:

“I lived in 'El Pirul' in the ranch of Benech Farms and it was very bad because we couldn't study... mi mamá y papá worked very hard on this ranch many hours and they were paid very low. I was not very happy. We slept in rooms of wood (madera). I think it was very good that lawyers got us out of this ranch. Now we live a comfortable (comodos) life in another place.... and I am grateful to you for taking us out of there. I now sleep in my own room...” -Hilda Vargas, 7-

Thank you for your time and your patience.

⁸ Moreno et al. v. Maddy. See also May Wong, *Labor Camp Residents Tell of Mice, Maggots*, The Santa Cruz Sentinel, August 3, 1995, at A-2.

⁹ Novoa et al. v Valley Sun Dried Products. See also **CRLA 1993 Annual Report** at p.8.