

# MLAP Monthly Report

Published by The Migrant Legal Action Program, Inc.

MAY, 1974  
Vol. 3 No. 5

Joel Solkoff, Editor

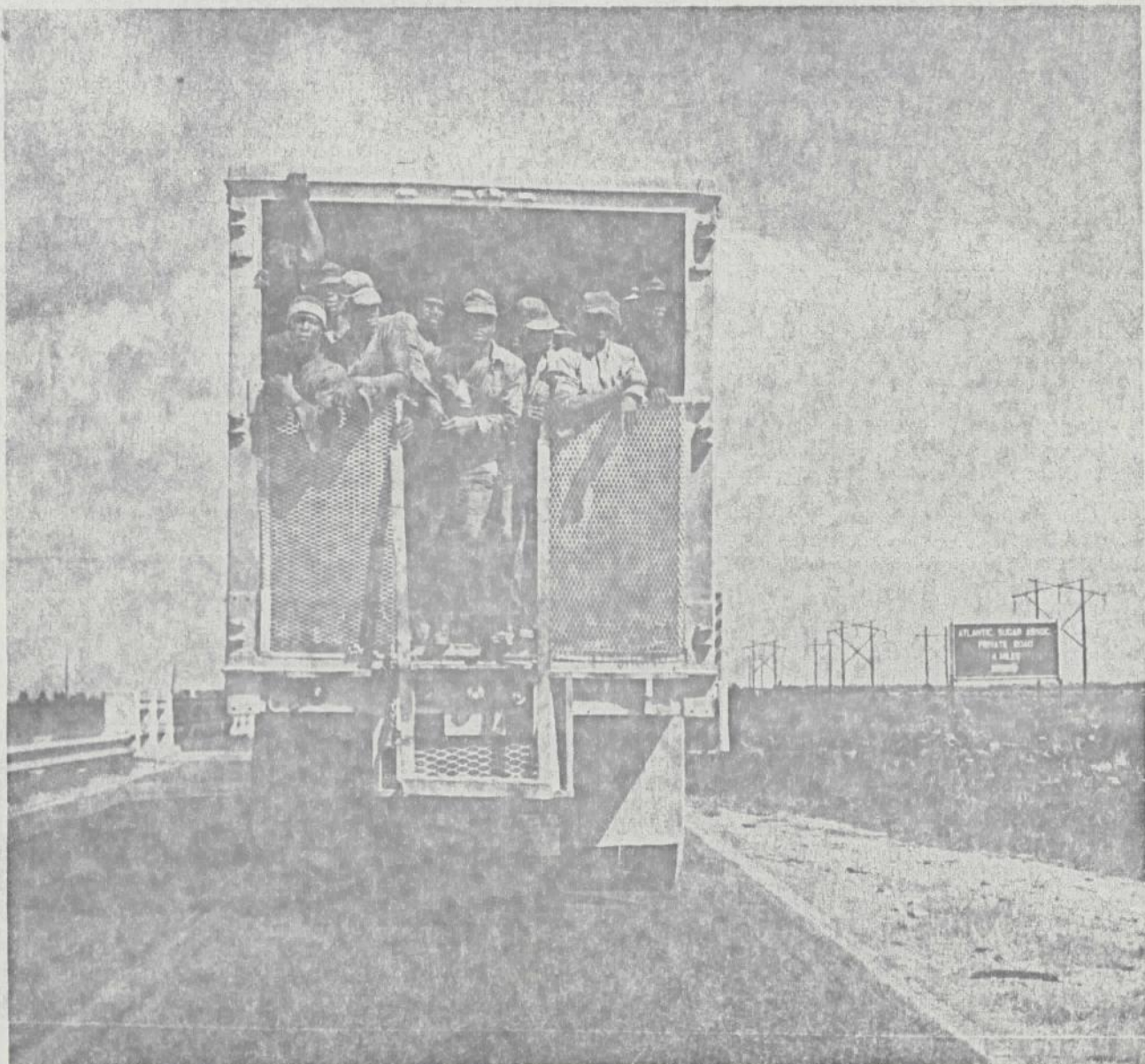
*Whenever a feeling is voiced with truth and frankness, whenever a deed is the clear expression of sentiment, a mysterious and far-reaching influence is exerted. At first it acts on those who are inwardly receptive. But the circle grows larger and larger. The root of all influence lies in one's own inner being: given true and vigorous expression in word and deed, its effect is great. The effect is but the reflection of something that emanates from one's own heart. Any deliberate intention of an effect would only destroy the possibility of producing it.*

— BOOK OF CHANGES

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## *We Who Are About To Die . . .*

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**The photograph**

The photograph on page one shows nearly 80 British West Indian farm-workers on their way to work in Palm Beach County, Florida. The truck was traveling at 55 miles per hour for over 5 miles. On the left of the two-lane highway is a canal filled with 30 feet of water. There is no shoulder on the right large enough to support a truck.

The photograph was taken on March 5th of this year. The truck—which is slowing down—is about to turn onto a private dirt road (15 miles east of Belle Glade) belonging to the Atlantic Sugar Association. These workers are traveling on U.S. Highway 441, which is also State Road 80 (affectionately called "Killer 80" by the local police). This is the only highway from Belle Glade "Winter Vegetable Capital of the World" to West Palm Beach—40 miles away. It is a road that is heavily used by trucks carrying produce and raw sugar.

Sam Knight, President of the Atlantic Sugar Association, told Melinda Foote, the reporter from the *Palm Beach Post* who took this photograph, that the workers—who are about to cut sugar cane—lay their cane knives on the floor while riding in trucks.

**The area**

The area south of Lake Okeechobee — including the towns of Pahokee, Belle Glade, South Bay, Okeelanta, and Clewiston—is sugar country. Over 189,000 acres of sugar cane are grown in this part of Florida called the Glades. The land, which is reclaimed from the swampy Everglades, has a rich, black, wet soil called *muck*. Almost anything will grow in muck, but the nature of the land creates problems. After Lake Okeechobee flooded in the 20's, the Army Corps of Engineers built a dam and flood control pumps to prevent the Lake from spilling over again. The land itself must be constantly drained, and so deep drainage ditches crisscross the area, alongside all the paved and the private unpaved roads.

The only highway south from Lake Okeechobee is U.S. 27, also two lanes, heavily traveled by large trucks carrying agricultural goods. According to George D. Barlow, Area Director of the Department of Labor's Office of Occupational Safety and Health, 27 and 80 are the two most deadly highways in the country.

Lawrence E. Will, author of a fascinating history of the area *Swamp to Sugar Bowl, Pioneer Days in Belle Glade* chronicles the costly and dangerous building of roads through the swamps in the 1920's. Because the highways sink and are traveled by heavy trucks, the pavement cracks frequently. It is so costly maintaining the

current road and so expensive to build new roads, that only the 14 mile stretch west from South Bay to Clewiston is a four-lane highway.

**The accidents**

On December 16, 1973, 38 sugar cane cutters were riding in a stake-side labor truck on the unpaved Okeelanta Mill Road, two miles west of U.S. 27. The vehicle swerved to avoid a hole, overturned, and 36 of the passengers were hospitalized.

On January 7, 1974, a second accident occurred to employees working for the same company, Okeelanta Sugar Division of the Gulf and Western Food Products Corporation. An 8' by 35' tractor-trailer (similar to the one shown on page one) was traveling on the same Okeelanta Mill Road. The vehicle was filled with sugar cane cutters on the daily dawn trip—over 15 minutes long—from the company living quarters to the fields. The truck was so crowded that some of the employees had to stand on one foot, others held onto a single overhead wire, and still others braced themselves against fellow employees or the walls of the truck. The vehicle, which had no seats, no light, and no windows, was fully enclosed.

According to Trooper William Grubbs of the Highway Patrol, the accident was caused when the steering mechanism of the new 1974 tractor went out, and the trailer jackknifed and turned over. After turning over, the trailer skidded over 115 feet on its top. Alphege Morris, 39 years-old from Jamaica, was killed, and 86 workers were injured—82 of whom were treated in the local hospital emergency room. The only person not injured was the driver, who was also the only American in the truck. In both accidents, injuries and lacerations were sustained from un-sheathed cane knives carried by the workers.

**"Recognized hazards"**

As a result of complaints filed in the area office of the Occupational Safety and Health Administration in Fort Lauderdale, an investigation was made. According to *The New York Times*, "The Federal Occupational Safety and Health Act of 1970 [is] widely regarded as one of the most important pieces of labor legislation since the New Deal. . . ." The law has teeth. For willful violation of OSHA orders resulting in death, the first offense for employers is a \$10,000 fine or 6 months in jail and the second offense is a \$20,000 fine and one year in jail. The law provides, under what is called a 7C1 agreement, for states and the Federal government to work in tandem, with state employees reimbursed for enforcing the provisions of the act.

According to George Barlow, "OSHA has made a profession out of safety."

The heart of OSHA, Mr. Barlow says, is the General Duty Clause, "Sec. 5(a) Each employer—(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." There are provisions within the Act that detail how safety standards are set up. Standards define what the "recognized hazards" are and how they must be avoided. However, barring the existence of specific standards, an employer may be cited for violations of the General Duty Clause if the hazard is "recognized".

The General Duty Clause is especially important for agricultural employees because—even though the Department of Labor recognizes agriculture to be the third most hazardous occupation in the country—there is a remarkable absence of agricultural standards. While over 150 safety and health standards have been promulgated in non-agricultural businesses, the only agricultural standards currently in effect are 1. sanitation in temporary labor camps, 2. storage and handling of anhydrous ammonia, 3. pulpwood logging, and 4. slow-moving vehicles.

According to Ben Patterson, former Director of the Division of Labor of the State of Florida and currently on contract with Gov. Reubin Askew as advisor on labor and workmen's compensation problems, there is a policy—originating in Washington, passed onto the regional division down to the area offices—not to inspect agricultural facilities. "Unfortunately," Mr. Patterson says, "the OSHA administration applies the general safety standards to all employers with the exception of agricultural employers."

Two documents, reproduced in this newsletter, would seem to support Mr. Patterson's allegations. The first document is a memorandum, reproduced on page 8. The memorandum is from James E. Blount, who—on February 12, 1973 — was Area Director of the Occupational Safety and Health Administration in Fort Lauderdale. At the time of the memorandum and indeed until January 31, 1974 the State of Florida and OSHA were working under a 7C1 agreement. Therefore, when both Okeelanta accidents occurred, the 7C1 agreement was still in force.

Under the agreement, the State of Florida gave inspectors to the Federal government who were directed by the OSHA area director. The Federal government reimbursed the State of Florida for half of the salaries and travel expenses of State employees. In Florida, the Bureau of Workman's Compensation was responsible for the State's safety program prior to its

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January 16, 1974

Mr. John C. Glenn, Administrator  
Industrial Safety  
Florida Department of Commerce  
Industrial Safety Section  
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1321 Executive Center Drive, East  
Tallahassee, Florida 32301

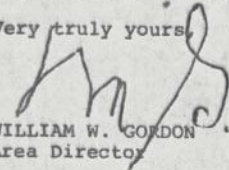
Dear John:

As per our telcon on the 14th relative to the agricultural program, the following information is provided.

On February 9, 1973, I received an in-house memorandum from the region relative to agricultural inspections. Basically, they advised the following SIC series were affected, Series 01 and 07 found on Pages 4, 5, 6, 7, and 8 of the 1967 SIC listings. SIC 074 is not included. We were also advised that we would deal with investigations of fatalities and complaints, but would coordinate with the regional office when making such investigations.

I am not forwarding the in-house memorandum, since you are aware it would not be appropriate, however, the pertinent facts regarding the agricultural inspections have been excerpted from this memorandum.

Very truly yours,

  
WILLIAM W. GORDON  
Area Director

Enc:

WWG:mv

Agriculture—Not subject to inspections

- 01 - Agricultural Production
- 011 - Field Crops
- 012 - Fruits, Tree, Nuts, and Vegetables
- 013 - Livestock
- 014 - General Farms
- 019 - Miscellaneous Agriculture
  - 0192 - Horticultural Specialties
  - 0193 - Animal Specialties
  - 0199 - Agricultural Production, not elsewhere classified
- 071 - Agricultural Services, except animal husbandry, and Horticultural Services. Includes vegetable and fruit picking, packing and shipping.
- 072 - Animal Husbandry - Includes animal hospitals, kennels, etc.
- 0731 - Horticultural Services which includes cemetery upkeep, garden maintenance, landscaping, spraying, tree planting and tree trimming for public utility lines.

Note:

Canning of preserved fruits, vegetables, seafoods, frozen fruits, fruit juices, etc., not included in Agriculture and subject to inspections now.

preemption by OSHA on December 28, 1972. The Bureau of Workmen's Compensation is in the Division of Labor of the Florida State Department of Commerce. Twenty-two people were turned over to the OSHA staff, but they continued to work out of Florida Department of Commerce offices where they drew Florida State paychecks.

The memorandum which was typed by R. Leavitt, secretary in the Miami office of the Department of Commerce, tells two Department of Commerce employees, B.T. Beall and J.R. Stock—who are under Blount's direction—, "Do not make any visits to agriculture industry." H.F. Smith, who received a carbon copy of the memorandum, was in charge of safety in Dade County in the Department of Commerce.

The second document, reproduced on page 3, is a letter from the OSHA area director in Jacksonville, Florida to the administrator of industrial safety in the Florida Department of Commerce. Remarkably, the letter was written after both Okeelanta accidents had occurred. According to the Federal Freedom of Information Act, if a document is truly an in-house memorandum, it is exempted from disclosure. [See *MLAP Monthly Report*, April, 1974.] However, under Florida's Freedom in the Sunshine Law, had Mr. Gordon sent a copy of the memorandum to Mr.

Glenn, it would be in a State department and so not exempted under the State law from public disclosure. Therefore, Mr. Gordon writes, "I am not forwarding the in-house memorandum, since you are aware it would not be appropriate."

The region from which Mr. Gordon received the "in-house memorandum" is Atlanta, which administers OSHA offices in the entire Southeastern United States. It would appear that the policy Mr. Gordon states is from "region" comes originally from Washington (but more on that later). SIC stands for Standard Industrial Codes, which are job classifications. The classifications, reproduced alongside the letter on page 3, list those job areas which are "not subject to inspections." In addition to not inspecting almost everything associated with agriculture, the regional office goes further. Even in the event of "fatalities and complaints" investigations must be "coordinated with the regional office...."

This is the atmosphere that prevailed among those responsible for insuring places of employment "free from recognized hazards that are causing or are likely to cause death or serious physical harm." This atmosphere prevailed even after one man was killed and over a hundred people were injured working for the Okeelanta Sugar Division of Gulf and Western Foods.

The citations

On January 17, 1974, two complaints were filed with the OSHA area office in Fort Lauderdale against the Okeelanta Sugar Division of the Gulf and Western Foods. One complaint was filed for each of the accidents. According to the law, "Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger." When such a complaint is filed if there are "reasonable grounds to believe that such a violation or danger exists" a "special inspection" takes place. Inasmuch as a man had been killed, there was no way for the Department of Labor to avoid making a "special inspection".

On February 6, 1974 two citations were issued against Gulf and Western Foods. The first citation fined the company \$600 as a result of an inspection made on January 2nd. The inspection alleged that, "The employer failed to provide employees a place of employment free from recognized hazards that were causing or likely to cause death or serious physical harm in that on or about December 16, 1973, em-

ployees were being transported in a vehicle with no provisions for seating and no provisions for the securing of cane knives while being transported." The citation orders the company to correct the violation "Immediately on receipt of citation." On January 11th, a special investigation was made of the same company, and because of the January 7th accident, the company was fined \$600 and likewise ordered to correct the violation immediately. The company is currently contesting the citations. Pedro A. Alvarez, Personnel Director at Okeelanta Sugar, said "I think we were complying with the law. If there is no law against something, how can it be illegal?"

On February 15th a complaint was filed against the Sugar Cane Growers Cooperative and the complaint notes the complainant "requested OSHA to inspect all major agricultural operations in the Glades area in. . . [the] complaint of January 17th."

On March 22nd a third complaint was filed against "Several" Sugar Cane Companies which are members of the Florida Sugar Cane League" and a list of 7 companies was attached.

In a citation issued on March 8th, the Atlantic Sugar Association was also cited for a serious violation and likewise fined \$600. The citation states that an inspection was made on February 27th. The company is contesting the citation.

The last citation issued by OSHA in this matter was against Sugar Cane Growers Cooperative on April 15, 1974. The date of the inspection was April 9th, and the company was likewise fined \$600.

Of the 7 sugar companies mentioned in the complaints, 3 companies were found in violation of the law, one company harvests entirely by machine and so does not transport workers, and the remaining 3 companies were inspected after the cane had been cut and the workers had already left the country.

#### Why OSHA issued the citations

Cause and effect is always a risky business, but considering the atmosphere —cited above— against enforcing the law, it is worth asking what forces existed that set into motion the enforcement of the law. Based on the evidence, three suggestions are offered. First, the presence of a vocal, indignant newspaper. Second, the existence of concerned party [or parties] filing the complaints. Third, the willingness of the area director of OSHA to invoke the General Duty Clause.

The *Palm Beach Post* is located in West Palm Beach. It has a circulation of about 100,000 and in addition to serving the affluent readers of Palm Beach, it also serves the Glades area. Palm Beach and Hendry Counties are conservative strongholds —as evidenced by

their continuous voting records—and so the newspaper is regarded by its overwhelmingly conservative readership in an adversary way (nicknamed the "Hanoi Times"). The *Palm Beach Post* has a reputation for muckraking on migrant issues—for which it has received a Pulitzer prize—and so the staff reporter in Belle Glade has never had an easy time of it. John Purnell, who was the last reporter stationed in Belle Glade, was arrested 3 times for minor traffic violations prior to telling his editor that he had had enough. The current reporter, Melinda Foote was cautiously covering fires, municipal elections, and police matters, when she was forced to deal with the accidents. She reported the events in a straight factual way, and the facts spoke for themselves. On March 14th, after the accidents and after citations had been issued, she quoted William Hunter, of the Florida Sugar Cane League, as saying, "Several of our companies are still hauling (workers) by trucks."

The *Palm Beach Post* ran two editorials on the accidents. The first, which appeared on January 9th, was entitled "More Than an Accident." It read, "Thousands of farm workers daily are transported to their jobs, some to cut cane and some to pick vegetables, in buses, trucks and trailers filled far beyond safe capacity limits. If this evokes images of cattle being herded to their destination, it is meant to; the attitude of many growers and farm labor contractors toward their employees had been one of less-than-human parity."

The second editorial, which appeared on March 9th, was run the day after Ms. Foote's article, "Despite Rule, Workers Ride on Trailers." The editorial said, "Mr. Knight said his company will end its harvest shortly (safe buses are planned for next season) and that the trucks now being used stay mainly on the inside, private roads, going only about a mile and a half on the highway. What difference does any of that make? A deadly accident could occur on the last day of the harvest as easily as any other day. The January accident that killed cutter Alphege Morris and injured more than 80 fellow workers did not happen on the highway but on a private mill road."

According to a local attorney who specializes in OSHA matters, the credit for the citations being issued goes to Melinda Foote and the *Palm Beach Post*. The attorney said that without the constant attention the paper gave to the matter, OSHA would have delayed until after the season making any investigation at all.

Then, there are the complaints. The person (or persons) bringing the complaints is allowed, by law, to remain anonymous to prevent reprisals by employers. However, filing a series of complaints meant that OSHA was officially

required to deal with the complaints in some manner.

Finally, there is George Barlow, Area Director of OSHA. This reporter was privileged to be granted an interview with Mr. Barlow on April 8th, and both the procedure necessary for obtaining the interview and the interview itself clarified how the law is enforced in agriculture.

#### The interview

Upon being telephoned, Mr. Barlow said that he could not in any way discuss the two accidents without permission from region. He said that in this matter he had had to get region's permission and region had consulted Washington where the Solicitor's Office made the final determination. Therefore, anything I say to you must be cleared by regional." In addition, he said, "I know who you say you are, but I've got no way of knowing who you are. You may be representing a grower."

Fran Ridgway, a Public Information Officer in Atlanta, handled the request for an interview in Mr. Allgood's

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*"If this evokes images of cattle being herded to their destination, it is meant to . . ."*

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absence. Ms. Ridgway explained that she could not give permission on her sayso alone, but would call back "one way or the other, after I check if it's all right." Upon calling back, Ms. Ridgway indicated that she had checked with Washington, and Washington had approved. "Mr. Barlow is expecting your call," she said.

In the fall of 1973, George Barlow replaced James E. Blount as Area Director at the Ft. Lauderdale office. Mr. Blount is now Area Director at Jackson, Mississippi. Mr. Barlow, who has a GS 14 rating, is himself a Compliance Safety and Health Officer and continues to make inspections as time permits. He has a lifelong interest in safety, having been a director of safety for the American Maritime Association and captain of his own ship. He is conversant with longshoremen safety problems, both from employee and employer perspectives. He holds a union card, and calls himself an "Alfred E. Smith Democrat." [It was Alfred E. Smith who said, "The only cure for the ills of democracy is more democracy."]

The area office in Ft. Lauderdale covers roughly half the State of Florida—from Tampa to the Keys. The

office sports a chart, showing that of the 12 area offices in the Southeastern United States, the Ft. Lauderdale office has written up nearly twice as many citations as any of the other offices. Up until February, Mr. Barlow had 6 Compliance Officers and one Industrial Hygienist. Now, the staff has been extended to 11, plus 5 clerical workers.

Mr. Barlow's office handles 4 or 5 serious violations every week. South Florida has been undergoing a tremendous building boom, and considering the number of permanent standards in construction and the necessity to inspect and follow up on complaints, the office is seriously overworked. Because of this, Mr. Barlow said, "We're so busy following up complaints, we don't have the time to make the inspections we'd like. Of the conditions that exist, we only have time to inspect about 10% of them . . . Of course, we follow up on every complaint filed. We have to."

The office's experience with agriculture has been minimal. Belle Glade is 67 miles away from Ft. Lauderdale and Homestead (another concentration of agricultural workers) is 38

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## ages of cattle their destination,

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miles away. "To my knowledge, there has never been a temporary labor camp complaint filed in this office." Mr. Barlow assumed that—despite recent farmworker housing scandals in Homestead and elsewhere in South Florida—the reason for the absence of complaints was that "most temporary camps are under state and county jurisdiction."

OSHA took effect on April 28, 1971, and since then, the Ft. Lauderdale office lists 16 deaths as having taken place in agriculture. "If you publish that figure," Mr. Barlow said, "you must do so with the caveat that *agriculture* is a broad classification. Included in that figure is a death on a golf course and another where a guy was working cutting trees so they wouldn't get in the way of the telephone lines and he held onto a palm frond, and there's a horticulturist . . . The fatalities in agriculture are mainly when tractors pulling, you know, those cane carts with 4 or 5 tons per cart and the tractor goes off a road into a canal and about 20 tons lands on the driver. There is no basis for citing in those accidents and no way of knowing whether, for example, the employee had been drinking . . . There was one guy—

considered by the company a valued employee—who was driving one of these tractors and was hit by a train. It was hard to get substantiation for what happened."

On December 27, 1972 two citations were issued against A. Duda & Sons Cooperative. "What happened was that a woman working in a packing house was crushed by a fork lift . . . apparently, the load prevented the driver from seeing her." The first citation list the alleged violations as "Failure to drive fork lift truck with load trailing when the load being carried obstructs the forward view, at celery house. Failure to keep a clear view of the path of travel when operating for lift truck." The second, "Failure to permanently mark aisles and passageways in celery house." The citations were issued based on OSHA's permanent industrial standards, and there were no contests to the citations.

However, with the exception of the transportation citations against the sugar companies, no citations have been issued for hazards encountered by farmworkers in the fields. Mr. Barlow said that there are "recognized standards in the construction industry which provide for fixed seats." However, Mr. Barlow said, it is the direction of his office that Compliance Officers, in writing up citations, must make sure that they have a good chance of winning if the employer decides to contest. He said that it doesn't benefit the enforcement of the law for officers "to write up complaints recklessly, and I'm very firm about that. That's why before issuing the citations for the General Duty Clause, I wanted to make sure we could win it if the company contested. So I asked regional and they brought it to the Solicitor's Office in Washington and only after I got a ruling from them did I issue the citations . . . Even if we do lose the first one (and I don't like to lose), I can't see that we can lose the second one. Because after the first accident, there clearly was a 'recognized hazard'. Even if the company says that there wasn't one with the first accident, the company has no way around that. . . . When we were working under the 7C1 agreement some of the State people were writing up all kinds of citations, but before the Review Commission they couldn't defend them."

Mr. Barlow said that considering the solicitor's ruling and especially "if we win the case" there will in effect be a transportation standard. Whether a specific transportation standard would be promulgated, Mr. Barlow did not know, although he assumed that there would. He said that it was his understanding that a whole set of agricultural standards were "in the works and will be published soon, but

that's something you can find out better than I can. We're pretty autonomous here, unless, of course, we do something wrong or something special comes up. Sometimes I wish we heard more from Washington . . ."

### 19 deaths in California

On January 15th of this year 19 farmworkers were killed and 29 others were injured when a 1955 bus owned by a crew leader plunged into a drainage ditch at Blythe, California. According to the investigation report by J. Dickenson of the California Highway Patrol, "The driver [was] operating the bus at an approximate speed of 45-50 MPH. The driver failed to heed the curve warning and advisory 20 MPH speed warning sign and entered the curve at too great a speed. No indication of braking was evident prior to the beginning of the centrifugal skid marks. Vehicle . . . entered the dirt shoulder on north edge of 20th Ave. in a centrifugal skid and continued in a N.E. direction to the edge of the drain ditch the bus then going air borne traveling approximately 56' before nosing into the water of the Rannels Drain Ditch, the left front of the vehicle striking the water first and then rolling over on its left side. All windows except the front two were broken out on impact allowing the water to enter freely. Virtually every seat except the seat across the rear of the bus was broken loose and all fatal victims were almost immediately, completely or partially immersed under water. Victims either drowned or were killed upon impact."

Bernard T. Tibbetts is the Area Director of OSHA in Long Beach, California. However, as of January first of this year, Federal OSHA is no longer in charge of administering the Occupational Safety and Health Act in the State of California. According to section 18(b) of the Act, individual states can enforce OSHA within its borders if they submit plans "at least as effective" as Federal regulations. The plan must satisfy the US Department of Labor that the state has adequate facilities for enforcement. Approximately 25 states have approved plans.

The chief of OSHA, Assistant Secretary of Labor John Stender, said, "Many labor leaders fear that if States enforce the OSHA Act, the level of safety enforcement will slip into the old pre-OSHA rut. I concede that, in pre-OSHA days, States, on the whole, failed miserably in their health and safety mission, but that was before enactment of the OSH Act. Now we have safeguards provided by the Act. State coverage must be at least as effective as ours to meet the criteria. That means if we here at OSHA do our job the AFL-CIO position won't hold up. If we fail to

do our job, the AFL-CIO position will be vindicated."

Mr. Tibbetts' office referred this reporter to Salvatore Marrocco, who—as District Manager Division of Industrial Safety—is in charge of administering in Blythe the California Occupational and Health plan. [The area offices of OSHA in California simply serve in an advisory capacity.]

Mr. Marrocco said that when the accident occurred, "We checked into it, but since it had been on a public thoroughfare and since the CHP [California Highway Patrol] was looking into it, we saw no reason to get involved. We have no jurisdiction in traffic accidents. We asked CHP if they wanted our help, but they had made an inspection and it was thorough enough not to get into the picture. If too many agencies get involved it only makes things more complicated."

Upon being informed that some of the citations in Florida were made for trucks traveling on the public highway, Mr. Marrocco was surprised. "Had it been on a private road we would be involved, but we don't have any jurisdiction on public thoroughfares. However, you'll have to check our solicitor's office to get a legal opinion on that." Miriam Guido, who is a staff attorney at MLAP specializing in OSHA matters said, "It makes no difference at all whether it's public or it's private. That's ridiculous."

Officer Robin Howard of the California Highway Patrol in Blythe said that a citation had been issued against Jesse Ayala, the farm labor contractor who owned the bus. Mr. Ayala was fined \$50. The citation was for a faulty electrical system, an inoperative emergency braking system, and an exhaust tail pipe that terminated under the bus. None of the violations was listed as the cause of the accident, which was found to be excessive speed and inattention on the part of the driver.

A mechanical examination of the bus by the Highway Patrol found: "All passenger seats and drivers seat are ripped loose from the floor and side wall mounting. Passenger seats were held in place by two 5/16 inch sheet metal screws on each inside leg and by 5/16 and 3/8 inch sheet metal screws on the outside rail. The use of the larger 3/8 inch screws was to hold the seats down in places where the 5/16 inch screws had stripped out previously. From the appearance of the sheet metal floor, all of the tearing force is on the front side of the mounting holes, indicating all the

force against seat backs was from the rear toward the front."

Officer Howard said that there is a regulation "requiring that seats must be *securely fastened*. But what does *securely fastened* mean? Before they were ripped out, they were *securely fastened* and there was no way of proving that they weren't. . . . All the deaths occurred by drowning. What happened was that there were people and seats on the bottom and people on top. The people on top survived and the people on bottom died. How heavy are seats? They're not very heavy, it's the people who are heavy."

The Feb. 22nd English Edition of *El Malcriado* published by the United Farmworkers Union [available by writing to P.O. Box 62, Keene, California 93531] contains a number of excellent graphic photographs of the California accidents. One photograph is labelled, "A close up of seats removed from Ayala bus shows the screws used to fasten the seats to the floor of the bus. How many other buses carrying farm workers are this flimsy?" According to the publication, the Highway Patrol examination proves that the fact that the seats were not properly fastened caused "the deaths of nineteen farmworkers . . ."

Henry Wakeland is the Director of the Bureau of Surface Transportation Safety for the National Transportation Safety Board. Mr. Wakeland is in the process of writing up a report on the Blythe accident. He said that he has not yet completed his report and the cause of the accident and the deaths has not yet been established to his satisfaction. He confirmed a memorandum which he had sent to Sen. Percy stating, "The floor was so thin that only one thread was actually holding the seats down." Mr. Wakeland went into some detail about how flimsy the seat fastenings were and speculated that the seats might have held were they bolted down. Had the seats held, there would not have been "the big jumble of seats and people" on the lower side of the bus which was responsible for so many drownings. Mr. Wakeland said that "the Safety Board recommends the use of buses in interstate with seat belts, cushioned seats, and seats strongly fastened to the floor—the kind of bus that is used in intercity operations." However, Mr. Wakeland admitted that the way that the seats were fastened in the Blythe crash was not unusual, that some bus seats continue to be fastened that way, and

no one has the authority to prohibit the hauling of individuals in such vehicles.

### Are fixed seats necessary?

Among growers and others interested in sugar cane in Florida, the Blythe, California accident seemed to prove that tractor trailers are safer for hauling workers than buses. Sam Lovell, a high school teacher of agriculture in Belle Glade, said that he would feel uneasy if buses were used in the Glades area because if one fell into a canal, it would be a repeat of the Blythe accident.

The General Manager of the Okeelanta Mill, Arthur Kirstein, reacted to his company accidents by saying, "Frankly, if these two accidents had happened with buses, it would have been worse."

Sam Knight, President of the Atlantic Sugar Association, said that safe drivers are more important than the vehicles used to transport workers—especially if those vehicles are "old, borrowed buses." He said that the drivers are given safety training and told daily "be careful. . . drive safely. . . drive slowly."

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## "Transportation priority."

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Carey Robinson, Counselor of Information at the Jamaican Embassy in Washington, said, "We do not think it was because of the seats. The man could have been killed even if he was sitting down." [The man who was killed was a Jamaican citizen.]

According to Charles Hoffmann, automotive engineer in the Highway Safety Division of the National Transportation Safety Board in Washington, "If you stand up, its hard to decelerate. (You know that from riding on DC municipal buses.) If you hit something, you're going to go. On an impact, say, of a 2G force you're going to double that . . . if you're sitting down, you stand a pretty good chance of staying put, and if you're belted you stand an even better chance."

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The MLAP Monthly Report [pronounced, "Emlap Monthly Report"] is published by the Migrant Legal Action Program, Inc., 1910 K Street, NW, Washington DC 20006. (Phone: 202-785-2475.) MLAP, which is funded by the Office of Economic Opportunity, is a back-up center, specializing in the legal problems of migrant agricultural workers and providing technical assistance to legal services attorneys. In February of this year, the program received a 501 C(3) tax status, which means that private sources are eligible to write off contributions to MLAP, a non-profit institution.

Staff: Rudolph Arredondo, Robert Catz, Eddie Hillmon, Terome Frazier, Burton Fretz, Juli Golden, Raphael Gomez, Alfonso Gonzalez, Katie Gruenheck, Miriam Guido, Barbara Harrison, James Herrmann, Juan Hinojosa, Ray Padilla, Lucy Rodriguez, Howie Scher, Jolene Smith, Joel Solkoff, Jim Tanfield, Rosemarie Wagner, Wayne Williams, Sandra Wynn, Octavio Agullar, Yolanda Arellano.

Disclaimer: The research reported here was performed pursuant to a grant from the Office of Economic Opportunity. However, the author takes full responsibility for the research and its accurate presentation. Nothing here should be construed as representing the opinions or official policy of MLAP or any agency of the United States Government.

Mr. Barlow said that hauling standing workers overloaded in tractor trailers is "without doubt dangerous. I can tell you that from my experiences on a ship. The thing's top-heavy and unstable, and if you've got cane knives—the thing I'm worried about is not anyone getting cut, but the handles—if anything happens, the knives are going to go flying and someone's gonna get knocked out. The answer is not buses. That's not what we're saying. The citation reads 'fixed seats' plus there's gotta be a place to secure the cane knives. . . . With any safety advance, someone could always come up with an argument about what happens if you do it. If you listened to that you'd not get anything done. What worries me is if you don't do it."

### The law

The accidents in Florida point out how poorly farmworkers are protected by the force of law. A Florida state statute [316.289] requires, "Every carrier of migrant farm workers shall systematically inspect and maintain, or cause to be systematically maintained, all motor vehicles and their accessories subject to its control to insure that such

conviction, and the small penalty all make the law ineffective. "We've run a few of these investigations. We can never get anyone who's willing to testify. We could probably have accident investigators out in the field. Administration exemptions apply to people in autos. . . . Even if we do think we have a case, it's a criminal case, and if the regulations are violated we take it to the Department of Justice which tries the case. It's tried as a misdemeanor before a jury, and if the jury finds the defendant guilty he can receive a fine of from \$100 to \$500."

There's the Farm Labor Contractor Registration Act of 1963 which requires crew leaders to register with the Department of Labor, to carry proper identification, and to obtain vehicle liability insurance, but the law applies only to independent farm labor contractors who recruit ten or more workers at any one time on an interstate basis. Bernard De Lury, Assistant Secretary for the Employment Standards Administration, admits that he can't enforce the act and does not do so [See *MLAP Monthly Report*, January, 1974].

The above are all of the transportation laws which cover migrant farmworkers. With the exception of the General Duty Clause of the Occupational Safety and Health Administration, there is no way to protect sugar cane cutters in the Glades area.

In April of this year, Wendell Glasier, Safety Specialist of the Agricultural Standards Branch of the Office of Standards Development, talked of the agricultural standards that are currently being developed. He said that he was aware of the situation in Florida, that no transportation standards are "contemplated. We've established our priorities in '72. What we've seen to be the most prevalent safety problems are what's contemplated. Transportation is just not a priority."

Currently, there are over 80 bills referred to the House Select Subcommittee on Labor which would amend or abolish the Occupational Safety and Health Administration. The Committee began holding hearings on March 19th and the hearings continue. They are expected to last through the year." According to Joe Alviani, counsel for the Committee, the only major development expected as a result of the oversight hearings is a consultation provision which would allow an employer to call in a

compliance officer prior to issuing citations. [This way, employers can know of violations before they are cited.] Mr. Alviani said that no developments in agriculture are expected.

### More of the same

On November 25, 1960, CBS broadcast a documentary on migrant farmworkers, beginning in Belle Glade, Florida, following them up the stream, and returning with them to Florida. Called "Harvest of Shame" the documentary, which was narrated by Edward R. Murrow, was the first of its kind. The documentary formed a public image of the condition of agricultural workers. When the program was rebroadcast this year in Florida, reaction by growers in the Glades was intense. Officials at the Florida Sugar Producers Association and the Florida Fruit and Vegetable Association wrote angry letters to CBS. In the past 14 years things have changed. Much of the land in the Glades now is used for sugar cane and 8,000 aliens are brought in for the October-May season.

In the documentary, Edward R. Murrow says, "Every year, as predictable as the seasons, there are accidents resulting in death and serious injury to these laborers. On June 6, 1957, at the intersection of U.S. Route 301 and State Highway 102, nine miles from Fayetteville, North Carolina, twenty-one migrants were killed: seventeen males, three females and a baby boy. The police report states one of the causes of the high loss of life was the 'packaging' of the occupants of the truck. Today, only six states have laws providing for the safe transportation of migrants within their borders. The state of North Carolina is not one of the six."

Mr. Murrow then interviews President Eisenhower's Secretary of Labor James Paul Mitchell who says, "Hardly a year goes by that we don't read in the paper of some very serious accident where sometimes a dozen or more people have been killed purely because there is no interstate standard with regard to safety."

The more things change the more they stay the same.—J.S.

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is just not a

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motor vehicles and accessories are in safe and proper operating condition in accordance with the provisions of this chapter." However, only crew leaders are defined as carriers of migrant farm workers, and since the two accidents happened with vehicles owned by the grower, the law did not apply. [Even if it did apply, conviction is a traffic violation, resulting in a small fine.]

The US Department of Transportation has a regulation requiring the safe transportation of migrant workers [49 CFR 398.1]. However, the vehicle must travel more than 75 miles and go across state boundaries. Isaac D. Benkin, an attorney in the Department of Transportation's Solicitor's Office, explained that the regulations, the absence of staff, the difficulty in getting

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The Book of Changes or The I Ching, translated into English by Cary F. Baynes from Richard Wilhelm's German version, is published by Princeton University Press.

Special thanks to Lucy Rodriguez, editorial assistant, to Janelle Vernon at Casillas Press (without whom this edition would not exist in 9 point helios type, 13 picas wide with 10 point leading), to the First Amendment of the Constitution of the United States, and to Senators Barry Goldwater and Lawton Chiles, who (while taking part in the unofficial National Day of Humiliation, Fasting and Prayer) debated on the floor of the Senate over the meaning of *humiliation*.

Subscriptions. This publication is sent, free-of-charge, to all who express interest in being placed on the mailing list. However, in order that we may continue to do this a token annual subscription of \$2 would be appreciated to help defray printing and postage costs. Concerning postage costs, the April issue of this newsletter was sent at the cheap non-profit organization rate. However, it may take well into May to reach some of you. Therefore, it's back to first-class this month. Maybe sometime soon we'll experiment again.

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## GOVERNMENT SAYS SUGAR COMPANIES MAY BE CHEATING ON WAGES

On April 25th, the US Department of Agriculture announced that it was withholding over \$8 million in subsidies to all sugar companies in Florida because of a possible violation of the Sugar Act. Subsidies are conditional upon the payment of "fair and reasonable wages" to workers. The USDA based its action upon a Department of Labor report that told of companies in the Glades area falsifying wage records. "Payments below the required wage standard were made while payroll records were kept showing wage compliance through the means of under recording the cutter's daily working time. This was generally done through counting the starting time one-half hour later than the actual time work started, deducting 1/2 hour for lunch although workers took only 5 to 15 minutes for this purpose and immediately returned to work, and the practice of rounding the quitting time back to the last even hour an employee was seen in the field by his leadman. One firm said it destroyed most of its payroll records . . ."

The hourly wage established by law under the Sugar Act is \$2.15 per hour. The workers who may have been cheated are all British West Indian cane cutters. The photograph on page one and the rest of this newsletter shows how these workers are transported to cane fields.

On May 2nd, the Department of Agriculture's Stabilization and Conservation Service (ASCS) held an investigatory meeting in Belle Glade before the Florida State Committee. A ruling is expected on May 7th. Whatever the ruling, it is bound to be appealed to the Deputy Administrator of the ASCS and then to the courts.

The Sugar Act is about to expire and a bill extending the Act for 5 more years is expected to be signed into law by July 4th. The bill, however, is still in House Committee, where procedures for determination of wages and wage grievances are likely to be taken out of the Department of Agriculture and into the hands of the Justice Department's administrative judges. According to *Business Week*, "In Florida . . ., this year's sugar crop will probably be worth more than \$275-million, or \$100-million above the value of the fiscal 1973 crop."



# MEMORANDUM

FLORIDA DEPARTMENT OF COMMERCE

Date February 12, 1973  
To B. T. Beall & J. R. Stock  
From James E. Blount, (R. Leavitt)  
Subject Inspections

Do not make any visits to agriculture industry.

JEB/rl

cc: H F Smith

### MLAP Monthly Report

Published by The Migrant Legal Action Program, Inc.  
1910 K Street, NW  
Washington, D.C. 20006

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