

Freedom of Expression of Farm Workers in Washington State

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I. Introduction

A. Living and Working Conditions of Farm Workers in Washington State

For the most part farm workers in Washington State work for private agricultural producers in the orchards, picking apples, cherries, and peaches, as well as grapes for wine.ⁱ Some farm workers work in the fields and with livestock.ⁱⁱ Most farm workers live in housing provided and owned by their employers.ⁱⁱⁱ Most farm workers in Washington are from México and although they work on a seasonal basis they live in Washington State throughout the entire year.^{iv}

Historically, migrant farm workers in Washington State have also played an important role in cultivating sugar beets. A migrant farm worker describes the experience of cultivating sugar beets:

I started hoeing sugar beets when I was eight years old. It is hard work, ten hours a day or more, with the sun beating down on you and the hoe handle blistering your hands. What you're doing is cleaning out the weeds, but it is hard to tell weeds from the beet leaves sometimes, so you have to pay attention. You can't just let your mind go blank. You look down the rows, and they're a mile long.^v

The amount that farm workers earn depends on geographical region and the type of work they perform. Erik Nicholson, Pacific Northwest Regional Director of the United Farm Workers (UFW), estimates that farm workers earn around \$10,000.00-\$12,000.00 a year per individual for seasonal work that may last four to six months.^{vi} According to statistics from the federal government, farm workers in the Pacific Region (Oregon and Washington) earn an average of around \$9.95 per hour and work an average of around forty hours per week.^{vii} Those in the field earn around \$8.87 per hour, those who work with livestock earn around \$10.78 per hour, and those who work in field and with livestock earn around \$9.23 per hour.^{viii}

In Washington State, it is estimated that around 80% of farm workers speak Spanish as a first language and 15% of farm workers speak an indigenous language and speak Spanish as a second language.^{ix} Meanwhile, according to Mr. Nicholson, it is rare that the farm workers speak English fluently. Researchers have estimated that in the United States 84% of farm workers are native Spanish speakers, 12% speak English as a first language, and 4% speak other languages.^x The literacy rate of most of the farm workers is right around the level of the sixth grade.^{xi}

Basic health and safety concerns arise from the living and working conditions of farm workers. Farm worker housing often consists of dilapidated buildings, overcrowding, and sporadic heat, sewage, and electricity.^{xii} Sometimes, workers are not provided basic shade and water necessary to prevent serious injury and death. For example, Manuel Camacho died during the Summer of 2005 in South Central Washington of heat stroke when working in a field.^{xiii}

A major health and safety concern for farm workers exists as a result of the use of toxic pesticides. A Washington State Supreme Court decision in 2002 resulted in the

state requiring monitoring of levels of cholinesterase in Washington State farm workers.^{xiv} The first-year results were that one out of every five of the farm workers had significant effects on their nervous systems from the pesticides.^{xv} Farm workers and advocacy groups are working to get legislation enacted that would end the use of certain toxic pesticides in Washington State by 2012.^{xvi} Meanwhile, agricultural employers have argued against testing for exposure to the pesticides.^{xvii}

This report considers how the living and working conditions of farm workers influence their legal and political possibilities to exercise rights to freedom of expression. The report does not attempt to relate how the legal and political possibilities of farm workers to exercise rights to freedom of expression in turn influence their living and working conditions. This would be beyond the scope of the report. The report simply offers an educational background that explains what the rights to freedom of expression of farm workers are.

B. Scope of the Report on Freedom of Expression of Farm Workers

The report considers the exercise of rights to freedom of expression by farm workers. The report considers the legal and political dynamics involved with the exercise of these rights that are unique to the situation of farm workers in the United States and Washington State. The situation of farm workers is unique compared with other labor groups for several very important reasons. First, most farm workers in the United States are not citizens; rather, most farm workers are undocumented aliens. This means that they reside in the United States illegally. Second, most farm workers live on the private property owned by their employers. Moreover, the legal protections provided by the Residential Landlord Tenant Act in Washington State do not cover farm workers. Third, most farm workers live in areas in which they do not have ready access to types of public forums where they would be able to express themselves.

A few recent examples evidence that despite their unique circumstances farm workers have the potential to carry out effective protests involving living and working conditions and immigration status. For example, farm workers in Florida were able to organize a boycott of Taco Bell to protest their living and working conditions as tomato farm laborers. The boycott lasted four years, ending when Taco Bell officials agreed to pay approximately \$100,000 a year to the farm workers.^{xviii}

In a recent example of protests by immigrants, hundreds of thousands of demonstrators in the United States protested in demand of better treatment for immigrants during late March 2006. They experienced a temporary victory when the Senate Judiciary Committee approved legislation making it possible for 11 million illegal aliens to attempt to become United States citizens.^{xix} Then, on May 1, 2006, hundreds of thousands of legal and illegal immigrants alike left work and school in what was called “A Day without Immigrants” to demand rights for illegal immigrants.^{xx} At this point, the extent and type of immigration reform that may occur is uncertain. A fundamental uncertainty in this respect is the extent to which illegal immigrants such as farm workers will be able to continue effective protests.

Farm workers have utilized a variety of resources to create effective protests. For example, in the protest by the tomato farm laborers, students from universities were very important in helping to create an effective boycott. Moreover, the Internet proved to be a very valuable resource for the students as well as farm workers to communicate and express their messages. In the most recent protests, a variety of groups including legal and illegal immigrants have come together to support the rights of immigrants and to engage in protests in traditional public forums. Massive demonstrations have occurred in cities from Los Angeles to Washington, D.C.

These most recent protests are being considered by some to be a growing civil rights movement on the part of Hispanics. At the same time, there have been discussions about whether the most recent protests would be able to be sustained. These questionings of the protests are not by people who are necessarily politically opposed to rights for illegal immigrants. Rather, they indicate an understanding that illegal immigrants face unique challenges in exercising rights to freedom of expression.

This report explains why illegal immigrants and farm workers in particular face unique challenges in the exercise of rights to freedom of expression. The report begins with a discussion of the immigration status of farm workers and the doctrine of selective deportation. The report analyzes how the immigration status of a farm worker affects the legal exercise of rights to freedom of expression. The report explains how it is possible under the doctrine of selective deportation for a farm worker to be deported for exercising rights to freedom of expression. Furthermore, the report explains how farm workers who are in the United States under a guest worker program may be deported through the actions of their employers. The report explains how a farm worker who resides in the United States as a guest of his or her employer thereby also faces practical constraints in speaking out about working and living conditions.

The report next discusses the exercise of freedom of expression by farm workers on private property. The report describes the constitutional rights to freedom of expression on private property existing under federal and state law. The report considers the rights to freedom of expression that exist in traditional, limited, and nonpublic forums. The report explains the Residential Landlord Tenant Act and the exclusion of farm workers. The report evaluates the particular challenges faced by farm workers in exercising rights to freedom of expression, given the private property rights of the agricultural producers. This includes challenges in exercising rights to free speech, such as speaking to members of the press. It also includes challenges in exercising rights to free speech and freedom of assembly, such as holding protests.

Finally, the report considers ways in which farm workers have come together to express themselves given their unique challenges in exercising rights to freedom of expression. It considers work by the UFW in organizing farm workers. It considers projects that have arisen out of this organization, such as community centers and radio stations.

II. Freedom of Expression of Farm Workers and Immigration Status

A. First Amendment Rights of Aliens and Selective Deportation

The First Amendment states, “Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”^{xxi} Freedom of expression means “freedom of speech, press, assembly and to petition the government for a redress of grievances, and the implied rights of association and belief.”^{xxii} This report focuses on basic rights of freedom of expression including freedom of speech, press, and assembly.

The First Amendment was incorporated through the Fourteenth Amendment to apply to state and local governments and state actors during the early part of the twentieth century.^{xxiii} Before this time the power of state and local governments to restrict an individual’s speech activities on government property was analogized to the rights of a private property owner.^{xxiv} Basic to the rights of a private property owner is the right to exclude others from one’s own property.^{xxv}

Supreme Court precedent has held that aliens in the United States have First Amendment rights protections. Specifically, aliens residing in the United States are accorded freedom of speech and of the press. This precedent was established in Supreme Court cases involving an alien from Australia named Harry Bridges, a longshoreman who exercised these rights in cooperation with trade unions and the Communist Party.^{xxvi}

The doctrine of selective deportation affects the practical exercise of rights to freedom of speech and the press by aliens. In *Reno v. American-Arab Anti-Discrimination Committee* the Supreme Court decided that an alien who is unlawfully in the United States could be deported on a selective basis because of his or her association with an organization that supports terrorism activity.^{xxvii} The Court stated that an alien who is unlawfully in the United States does not in general have a constitutional right to assert selective enforcement of laws to defend against his or her deportation.^{xxviii} The Court also wrote that when the alleged discrimination against aliens unlawfully in the United States is “outrageous” then selective enforcement could be used as a defense.^{xxix}

The *Reno* opinion deciding these constitutional issues of selective enforcement was written by Justice Scalia and joined by Chief Justice Rehnquist, and Justices O’Connor, Kennedy, and Thomas, with Justice Stevens concurring. Justice Ginsburg concurred in part, stating that she left open the question about selective enforcement.^{xxx} Justice Ginsburg stated, “under our selective prosecution doctrine ‘the decision to prosecute may not be deliberately based upon...the exercise of protected statutory and constitutional rights.’”^{xxxi}

The remaining Justices did not see fit to discuss the selective enforcement of deportation as an issue in the case. Justice Souter dissented and reasoned that the arguments about the selective enforcement claims were *dicta* because they did not constitute arguments necessary to decide the case.^{xxxii} Justice Breyer did not discuss his view on the constitutional issues of selective enforcement of deportation of aliens unlawfully in the United States.

The Supreme Court has not entirely clarified when alleged discrimination is “outrageous” so that it may be used as a defense. In the case of *Reno*, the Immigration

and Naturalization Service (INS) instituted deportation proceedings against aliens unlawfully in the United States associated with the Popular Front for the Liberation of Palestine (PFLP), a group the United States government “characterizes as an international terrorist and communist organization.”^{xxxiii}

Yet, the *Reno* decision leaves open the possibility that an illegal alien could be deported for exercising rights to freedom of expression under the doctrine of selective deportation. In one recent example, Congressman Tom Tancredo (R-Colorado) demanded the deportation of an undocumented youth named Jesús Apodaca. Congressman Tancredo demanded the deportation after the high school honors student agreed to an interview with the press about the availability of financial aid for undocumented persons.^{xxxiv} This case has been debated politically, but Mr. Tancredo’s demands did not result in the deportation of Mr. Apodaca. Therefore, the case did not reach the courts and the matter was not decided on a legal basis.

The next section of the report discusses the immigration status of farm workers in the United States. It begins with a basic historical background and then discusses the estimated numbers of farm workers in the United States and Washington State who are undocumented. It concludes with a brief discussion of the political and legal consequences of the doctrine of selective deportation for farm workers.

B. Immigration Status of Farm Workers in the U.S. and Washington

The immigration of Mexicans for seasonal work in the United States began to become sizable during the 1920s, coming to replace immigration from countries such as China and Japan.^{xxxv} At this time, the United States government began to foster policies to bring Mexicans into the United States for seasonal work.^{xxxvi} Moreover, many employers preferred Mexican immigrants for seasonal work. In interviews to the government employers said that they preferred Mexican workers because they were “available, tractable, and cheap.”^{xxxvii}

The United States government has restricted the legal immigration of migrant farm workers depending on the need of labor for agricultural and other industrial production. Familial units including the husband, wife, and children have worked as migrant farm laborers for extremely low wages.^{xxxviii} During the *bracero* program of the mid-1900s, males came from México to work in agricultural production without their families.^{xxxix}

There was a special need for migrant labor during World War I, followed by federal immigration laws that limited legal immigration from México during the mid-1920s.^{xl} The proportion of Mexican immigrants who were undocumented increased at this time. This occurred because employers continued to want cheap migrant labor and Mexican immigrants were able to cross the border despite increased enforcement of immigration laws.^{xli}

Migration of people from México to the Pacific Northwest began in the early 1900s and there was a significant increase in numbers by the 1920s. There also followed a closing of borders and deportation during the economic depression beginning in the

latter 1920s.^{xlii} Yet, Mexican laborers were found necessary for arduous agricultural work such as sugar beet production and they were recruited, with their numbers increasing in the Northwest beginning during the Great Depression.^{xliii}

Migrant farm workers from México played a vital role in overall agricultural production in the Northwest during World War II.^{xliiv} The Washington State Extension Service reported on the necessity of migrant worker contract laborers “for work in areas...which local labor will not accept.”^{xliv} The *braceros* faced discrimination, extremely hard labor conditions of long hours and little pay, and a very low quality of food and shelter.^{xlvi}

The *bracero* program came to be replaced by other programs such as the H-2A guest worker program, which by the mid 1960s came into relatively widespread use.^{xlvii} This program allows foreign workers temporary non-immigrant residence in the United States for purposes of ensuring sufficient labor supply to harvest U.S. crops.^{xlviii} These workers are by definition temporary and in the United States for purposes of working for the employer who brings them here.

There exist a small although not insignificant number of farm workers in the United States and in Washington State who are here on H-2A immigration status. Mr. Nicholson estimates that at present there are around 200 guest workers in Washington State.^{xlix} Researchers have estimated that around three percent of farm workers in the United States are here on H-2A status.¹ The guest workers stay in the United States for only short periods of time and agricultural producers who host these guest workers may deport them at any time, and often do deport them when they are no longer wanted.^{li}

At present, there exist around 150,000 farm workers in Washington State, according to Mr. Nicholson.^{lii} Roughly ninety-nine percent of these workers are Mexican.^{liii} It is important to note that according to the United States Department of Agriculture there were 64,000 farm workers in the Pacific Region (which includes Washington and Oregon) as of April 2005.^{liv} Mr. Nicholson estimates that around three-fourths of migrant farm workers are in Washington illegally and are undocumented, which may account for the discrepancy.^{lv} It is estimated that four to six million undocumented Mexicans are living in the United States.^{lvi} According to federal estimates, around twenty-two percent of farm workers are citizens of the United States, twenty-four percent of farm workers has a green card and is a legal permanent resident, and fifty-two percent are undocumented.^{lvii}

There is discrepancy in terms of the exact numbers of farm workers who are in the United States and undocumented. This is not surprising given the practical difficulty of locating and counting such workers. All major estimates point to a sizable proportion of undocumented farm workers residing in the United States. As the next section of the report describes, these workers face basic practical difficulties in exercising rights to freedom of expression, given the doctrine of selective deportation.

C. Immigration Status of Farm Workers and Selective Deportation

Both legal and political arguments may be made for and against the doctrine of selective deportation. Fundamental to this report is to provide basic educational background about this doctrine as decided by the Supreme Court. As the law, selective deportation influences the practical ability of farm workers who are undocumented to exercise their rights to freedom of expression. A worker who may be selectively deported for drawing attention to him or herself by exercising rights to free speech may be less likely to do so than a worker who is legally in the United States.

The immigration status of a farm worker influences the ability of that farm worker to practically exercise his or her rights to freedom of expression. The case of the undocumented farm worker represents the most obvious example. It is possible under the doctrine of selective deportation that a farm worker would be deported for exercising rights to free speech, for example, by engaging in a protest. The Supreme Court has yet to clarify when discrimination is so “outrageous” that selective enforcement may be used as a defense.

At the same time, farm workers who are in the United States under the H-2A guest worker program may be deported if they are unemployed. An employer may consequence the deportation of a farm worker by ending his or her employment. Therefore, a farm worker who resides in the United States only temporarily as a guest of his or her employer also faces practical constraints in speaking out about working and living conditions.

It is important to point out that there have not been reports of illegal immigrants facing selective deportation as a result of participation in the massive protests occurring on May 1, 2006. Neither have there been reports of guest workers being sent back to their home countries as a result of participation in such protests. However, it is equally important to point out that the Supreme Court has not yet decided whether if this were to occur it would be so “outrageous” as to be unconstitutional.

The next section describes a further important factor influencing the possibilities of farm workers to exercise rights to freedom of expression. This is the fact that most farm workers live on property owned by their employers. The private property rights of the agricultural producers most fundamentally mean that they have rights to exclude others from their property.

III. Exercise of Free Expression by Farm Workers on Private Property

A. Free Expression on Private Property and Federal and State Law

Most farm workers live in housing owned by their employers. The farm workers also spend most of their days on agricultural land that is privately owned by their employers. Furthermore, most farm workers live in rural areas where there do not exist significant public spaces, as compared with the public spaces that exist in cities. The lack of public spaces where farm workers work and live also limits their practical ability to exercise rights to freedom of expression.

A free speech protest occurring on a traditional public forum would receive the highest level of constitutional protection—strict scrutiny. Regulation of speech within a traditional public forum must be content neutral both as to subject matter and viewpoint, must be narrowly tailored to serve a significant government interest, and must leave open alternative avenues of communication.^{lviii} Examples of traditional public forums include town squares, public streets, public sidewalks, and public parks. In general, there exist similar constitutional limitations for the time, place, and manner regulations that may occur in limited public forums, such as public auditoriums.^{lix}

In the nonpublic forum, a free speech protest would receive a lower level of constitutional protection—rational basis review. Regulation of speech in a nonpublic forum must serve a legitimate government interest; furthermore, neither subject matter bias nor viewpoint bias is generally allowed.^{lx} Examples of nonpublic forums include schools, post offices, military bases, and airport terminals.

By comparison, there is no federal constitutional right to use private property for free speech purposes. As the United States Supreme Court stated in *Lloyd v. Tanner*, private property does not “lose its private character merely because the public is generally invited to use it for designated purposes.”^{lxi} However, this reasoning does not limit the exercise of police powers by state and local governments, nor does it limit the sovereign authority of state governments to adopt in their constitutions individual liberties more extensive than those protected by the federal Constitution.^{lxii}

States and localities may provide greater constitutional protection than exists under federal law. In *Pruneyard v. Robins* the United States Supreme Court in an opinion by Chief Justice Rehnquist held that the California Supreme Court’s construction of the California Constitution could force the private property owner of a shopping mall to use the property as a forum for free speech purposes subject to reasonable time, place, and manner restrictions. The private property restrictions by the state government did not amount to a taking in this case because they did not unreasonably impair the value or use of the property.^{lxiii}

State laws in the West have established relatively high levels of rights protections with respect to freedom of expression on private property.^{lxiv} For example, in California both speech and petition activities are protected in private shopping malls subject to restrictions of time, place, and manner. In Oregon and Washington, rights to freedom of expression that are protected in private shopping malls are more limited compared with California.

In Washington State, freedom of expression on private property may only be protected where the property is considered to have traditionally served as a type of public forum. The idea of the public forum originated in *Hague v. CIO*, in an opinion written by Justice Roberts:

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights,

and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.^{lxv}

The rationale of a public trust became the basis of the judicial reasoning behind the public forum. Public places such as streets, parks, and town squares became identified as public forums.^{lxvi} The United States Supreme Court has used the language of a public trust to provide the rationale for First Amendment rights in major decisions concerning public forums.^{lxvii}

The Washington State Supreme Court has established criteria for deciding when there exists a public forum, and, therefore, when speech and initiative guaranties apply to private conduct:

The first is the use and nature of the private property...As property becomes the functional equivalent of a downtown area or other public forum, reasonable speech activities become less of an intrusion on the owner's autonomy interests...When property is open to the public, the owner has a reduced expectation of privacy and, as a corollary, any speech activity is less threatening to the property's value...A second factor is the nature of the speech activity...The exercise of free speech is given great weight in the balance, because it is a preferred right...And where the exercise of the speech also involves the initiative process, the activity takes on added constitutional significance...The potential for reasonable regulation of the speech must also be considered. No one has an absolute right to free speech...The time, manner, and place of the exercise of that right may be regulated.^{lxviii}

Based on these criteria, under Washington State law there exists a right to petition in an exercise of the initiative and / or referendum process at a large, private shopping mall.^{lxix} However, no such right exists at a private medical center.^{lxx} Furthermore, there is no right to solicit contributions and sell literature in a privately owned shopping mall.^{lxxi} In Oregon, rights to free expression on private property also are limited to petitioning and the exercise of the initiative and / or referendum process in private shopping malls.^{lxxii}

Under Washington State law, farm workers are not constitutionally protected in the exercise of free speech and assembly on the private property owned by their employers. Therefore, there is no constitutional protection for farm workers even if they were citizens to hold a public protest on the private property owned by their employers. Neither is there constitutional protection for farm workers to distribute leaflets on the private property owned by their employers.

B. Rights of Farm Workers to Visit with Others on their Premises

Although there is no federal constitutional right to use private property for free speech purposes, under Washington State case law farm workers as tenants do have basic rights to visit with whom they choose on their own premises. The common law offers very important protections in this respect, given that farm workers are not protected under the Residential Landlord Tenant Act (RLTA). It is under the common law that farm workers have rights to invite who they want to their premises and in this manner to visit with and communicate with those individuals whom they choose.

Farm workers when housed in conjunction with their employment are not covered by the Residential Landlord Tenant Act (RLTA). The following living arrangement is exempted from the chapter:

Rental agreements providing housing for seasonal agricultural employees while provided in conjunction with such employment.^{lxxiii}

Therefore, the seasonal farm workers in Washington State are not covered under the RLTA even if they pay rent for the housing provided by their agricultural employers.

Because migrant farm workers are exempted from the RLTA they are denied basic protections that individuals otherwise have under the law. The RLTA guarantees tenants certain rights that cannot be changed even by agreement of the landlord and tenant. In accordance with these rights, the RLTA prescribes certain obligations that a landlord must meet.

Under the RLTA, the landlord must maintain a premises fit for human habitation. This means that a landlord must comply with applicable regulations so that the health and safety of the tenant is not impaired.^{lxxiv} Moreover, the landlord must keep structural components in good repair.^{lxxv} The landlord must also keep common areas clean, sanitary, and safe.^{lxxvi} This includes control of infestation by pests.^{lxxvii} Furthermore, the landlord must provide the tenant adequate locks and keys.^{lxxviii} The landlord must maintain electrical, plumbing, heating, and other facilities and appliances in reasonable working order.^{lxxix} The landlord must also provide adequate facilities for heat and water and hot water.^{lxxx}

A basic right of tenancy under the RLTA is that landlords are kept from interfering with the tenant's possession of the property. Under the RLTA:

The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.^{lxxxi}

Under the RLTA, a tenant may not unreasonably withhold consent for a landlord to enter, and, a landlord may enter without consent in cases of emergency or abandonment.^{lxxxii} Yet, the RLTA establishes important restrictions on the ability of a landlord to access a tenant's property and thereby interfere with a tenant's possession of it. And, since farm workers are not covered under the RLTA, they are not protected under the legislation from a landlord interfering with their possession of property.

It is under the common law that farm workers have a basic right to visit with whom they choose on their own premises. In *City of Bremerton v. Widell*, the Washington State Supreme Court stated the following common law rule:

The common law is clear that the landlord may not prevent invitees or licensees of the tenant from entering the tenant's premises by passing through the common area. Moreover, the law is clear that an invitee or licensee who does so, even after a specific prohibition by the landlord, is not a trespasser and does not violate a criminal trespass statute.^{lxxxiii}

The Washington State Supreme Court stated that its case law had not changed this common law rule and used a case involving an important precedent called *State v. Fox*.^{lxxxiv}

In *State v. Fox*, the Washington State Supreme Court overturned the trespass convictions of a union organizer and a legal services attorney who entered the boarding area of an asparagus farm at the invitation of a migrant farm worker and at the objection of the owner of the farm.^{lxxxv} The Court relied on *Franceschina v. Morgan* to support its decision that the farm workers had a right to invite others onto the premises.^{lxxxvi}

In *Franceschina*, the United States District Court for the Southern District of Indiana decided that:

The real question is whether or not the owner of land may lawfully prescribe who may talk to his tenants, and monitor any conversations which may be permitted. The question supplies the answer, which must be in the negative. Likewise, it matters not whether the status of the migrants vis-à-vis the company be characterized as that of tenants, as maintained by plaintiffs, or as servants, as argued by defendants.^{lxxxvii}

Therefore, according to the United States District Court, it would not matter if the farm workers paid or did not pay for the premises that they occupied; their First Amendment rights in terms of inviting and conversing with guests of their choice would remain.

By contrast, the Washington State Supreme Court reasoned that the workers "paid for the right to live in the camp and enjoyed the status of tenants"; therefore, the workers had a right to invite others onto the premises.^{lxxxviii} The Court does not clearly state that the farm workers had to have paid rent to enjoy the status of tenants and have their rights protected. In fact, the Court relies on *Franceschina* as precedent, which states just the opposite. However, the Court may decide to clarify this point in a future decision.

The Court in *Fox* went on to discuss whether Fox, the attorney in the case, and Gamboa, the labor organizer, had a right to go to the labor camp to contact workers. The

Court decided that Fox was lawful in waiting on the premises for Gamboa to find those workers who wished to talk with him.^{lxxxix} The Court decided that these actions were protected under the First and Fourteenth Amendments.^{xc}

The Court also said that the actions by Gamboa, the labor organizer, were legal.^{xcii} The Court said that the case law was clear in allowing union organizers the right to go where reasonably necessary to organize workers.^{xcii} The Court quoted Washington State statute:

Unions legalized. It shall be lawful for working men and women to organize themselves into, or carry on labor unions for the purpose of lessening the hours of labor or increasing the wages or bettering the conditions of the members of such organizations; or carry out their legitimate purposes by any lawful means.^{xciii}

Furthermore, the Court quoted from the Washington State statute providing that persons shall not be prosecuted for carrying out such activities.^{xciv} The Court found that Gamboa, who had gone to meet with the workers outside of working hours and during the daytime had acted reasonably.^{xcv}

Although farm workers have basic rights to have persons visit them, they may not create a nuisance as part of their use of the property. Washington State law defines a nuisance as follows:

Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.^{xcvi}

A landowner could take legal action against farm workers and / or their guests found to be creating a nuisance or of course in any way breaking the law.

Under the common law, farm workers have the basic right to invite others onto the premises where they have the status of tenants. Farm workers have the status of tenants when they pay rent. The Washington State Supreme Court in its use of case law to support its decision suggests that farm workers also have the status of tenants for First Amendment purposes when they receive housing as part of their employment. Certainly landlords may restrict farm workers in their choice of guests when they are found to be creating a nuisance. Finally, under Washington State law, attorneys and labor organizers have the basic right to visit labor camps to contact farm workers. Next, the report considers the rights of the press on private property.

C. Rights of the Press on Private Property

In general, members of the press do not have any greater rights of access to information than that of the public.^{xcvii} This means that in most situations the press also would be considered to be trespassing onto private property if any other person in a similar situation would be considered to be trespassing. For example, even upon execution of a warrant by police, the media may not accompany police into a private home.^{xcviii} At the same time, the press may publish information that is unlawfully obtained if the information is truthful and a matter of public concern, the media did not obtain it unlawfully or know who did, and the original speaker of the truthful information had reduced expectations of privacy.^{xcix}

Carol Dansereau, Executive Director of the Farm Worker Pesticide Project, describes an incident in which farm workers refused to communicate with the press. In October 2005, *National Geographic* photojournalist Peter Essick visited to write a story on farm workers and pesticide use by agricultural producers.^c The journalist was attempting to take a photograph to demonstrate that farm worker houses and schools are located right next to the orchards where the toxic pesticides are sprayed. The journalist Mr. Essick knocked on the door of one of the farm worker houses located next to the orchards. The journalist asked the inhabitants to speak with him. The journalist also asked the inhabitants if he could take a photograph of them. The adults who resided in the home refused to speak with the journalist or to allow him to take a photograph. Mr. Essick said that the inhabitants told him they did not want him taking pictures of property they did not own.^{ci}

Under Washington State law the farm workers did have the legal right to invite Mr. Essick to visit them at their residence. In general, once lawfully on property, a photographer is able to take and publish photographs that are of public concern. Therefore, this incident raises a question as to why the farm workers did not want photographs taken. The next section of the report considers the extent to which the political and economic power of the agricultural producers results in practical difficulties for the exercise of rights to freedom of expression.

D. Political and Economic Dynamics of Free Speech

The private property ownership of the agricultural producers signifies something more than legal rights; it also signifies a political and economic power over the actions of their tenants and employees. The agricultural producers have direct authority over the immediate hiring and firing of any farm worker. If the farm worker were provided housing as a result of employment, a firing would also result in the loss of housing. If the farm worker were a guest worker or were in the country illegally, it could also result in his or her deportation.

Mr. Nicholson has witnessed many cases in which farm workers do not speak out about living and working conditions because they fear losing their jobs.^{cii} According to Mr. Nicholson, this fear influences the filing of workers' compensation claims regarding

injuries and illness resulting from the use of pesticides.^{ciii} Meanwhile, according to Mr. Nicholson, retaliation is very difficult to prove and such claims are not usually successful.^{civ} Moreover, at the same time that a farm worker is fired, he or she will also be evicted from the property owned by the agricultural producer.

The basic legal and political power of agricultural producers to restrict the expressive activities of farm workers does not mean that they necessarily will do so. The relationship between farm workers and their employers is not necessarily antagonistic. For example, wine growers have tended to have more supportive relations with their farm worker employees compared with other agricultural producers.^{cv} In one recent example, a Yakima wine grower has started a program to create college scholarships for farm workers and their children.^{cvi}

It is beyond the scope of this report to attempt to evaluate the extent to which farm workers do not speak out for fear of losing their jobs or housing. Rather, this report has considered how the unique living and working conditions of farm workers influences their legal rights to freedom of expression. The report has focused on a consideration of citizenship status and property ownership. Next, the report considers the ways in which farm workers—given their unique living and working environments—have demonstrated the exercise of rights to freedom of expression.

IV. The Exercise of Freedom of Expression by Farm Workers

The UFW continues to serve as the basic organizational structure for political expression by farm workers. The UFW organizes farm workers and lobbies the legislature about living and working conditions. At the same time, it may be difficult to distinguish political activities from activities that are experienced first and foremost for purposes of individual and cultural enjoyment. UFW also provides a vehicle for individual and cultural expression on the part of farm workers.

The UFW originated in the early 1960s under the leadership of Cesar Chávez.^{cvi} The movement gained strength during the mid-1960s when the labor organization took part in a grape strike and boycott against the DiGiorgio Fruit Corporation. At this point, workers of the DiGiorgio Fruit Corporation voted to create the UFW. For the most part, the UFW has focused on labor organizing and the enactment of legislation to create improved working and living conditions for farm workers.

The UFW also works to provide basic social, economic, and cultural resources to those in farm worker communities. There are around 5,000 farm workers in the UFW union in Washington State.^{cvi} The UFW also provides basic support services to those who are not in the union. For example, the UFW sponsors the Worker's Center, located 30 miles East of Yakima, in Sunnyside. The Worker's Center provides general advocacy support for workers, including workplace and consumer protection support. The UFW also sponsors a radio station located in the Pasco / Tri-Cities area with a range reaching the lower Yakima Valley and down to the Oregon Moses Lake region, called Radio Campesina.

In terms of its work with farm workers, the UFW has focused its organizational resources on individuals who are of Mexican origin. This means that the political support and cultural centers focus on communication in Spanish and in other languages indigenous to México. At the same time, there is also an influx of H2-A guest workers from Southeast Asia to Washington State from countries such as Thailand.^{cxix} These workers because they do not speak Spanish or English may not readily be able to access the support systems and cultural centers established for migrant farm workers by the UFW.^{cx}

Perhaps the most prevalent type of expressive activity among farm workers involves the use of radio programming. The stations provide a forum for farm worker communities to engage in a free exchange of debate that is constitutionally protected. Regulations of broadcast speech are permitted only if they are narrowly tailored. Courts review regulations of broadcast speech with the highest level of scrutiny—strict scrutiny. Regulations of broadcast speech must both further a substantial government interest and ensure that public issues are covered in a way that is adequate and balanced.^{cxii}

There exist two major radio stations accessed by farm workers in Washington State. Radio Campesina originated in 1966, created under the auspices of the Centro Nacional de Servicios para Campesinos Inc. (NFWSC).^{cxiii} The NFWSC was founded by Cesar Chávez and the leadership of farm workers and industrial unions. Radio Campesina focuses on entertainment as well as education and public service. The station combines popular music, radio call-in, political and special interest news reports, and the transmission of live, local events. The music presented by the station is largely of the origin of different regions of México.

Radio KDNA began broadcasting in the Yakima Valley in 1979 and is currently the only full-time educational public radio station in the United States that is broadcast in Spanish.^{cxiiii} Radio KDNA focuses on Spanish speaking audiences and presents Mexican music such as accordion, banda, and mariachi. The station also presents locally produced news reports of regional as well as national and international interest. In addition, the station provides educational programming, for example, about employment opportunities in the region. Moreover, the station presents educational programs for children, talk shows, as well as an on-air flea market.

The radio programming of the farm workers provides for expressive activity that is constitutionally protected. Farm workers may use the radio programming for political as well as for individual and cultural purposes. In this manner the UFW provides an organizational structure that allows for individual and cultural expression at the same time that it works toward economic and social changes.

V. Proposals for Future Research

Farm workers face distinct legal and political possibilities in the exercise of their First Amendment rights to freedom of expression. It is recommended that interviews with farm workers be accomplished to achieve a better understanding about their particular experiences. Based on my interviews and other research in this report, there is

evidence to suggest that farm workers face unique legal and political challenges in exercising rights to freedom of expression.

Farm workers often live in rural communities that contain large amounts of private property compared with public property. Because there is no federal constitutional right to free speech on private property, the possibilities of farm workers to engage in free speech protests where they work and live are thereby limited. Furthermore, farm workers often live where they are employed. They often are not citizens; many farm workers are in fact undocumented aliens. These factors create legal as well as political challenges in the exercise of rights to freedom of expression by farm workers.

This research report has focused on a basic educational background of the laws in question. The limitations of the research project make it difficult to know how, at a practical level, farm workers do or do not exercise rights to freedom of expression. For example, farm workers have focused expressive activities on projects such as radio station programming. It is possible that great personal and political fulfillment is achieved through these projects. Interviews would be necessary to discover the extent and type of expressive activity involved in projects such as community centers and radio programming.

The information in this report is directly relevant to the lives of working people in Washington State because it concerns the ability of workers to visit with each other and with outside organizers, to organize in groups such as unions, and to speak out about unsafe working conditions. Informed policymaking in a democracy such as ours depends on the ability of individuals and groups of individuals to freely participate in political debate. The story about the possibilities and difficulties farm workers have in exercising rights to freedom of expression is essential to documenting their histories, at individual, social, and political levels.

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