Child Agricultural Labor in America: Uncharted Territory

By Alma S. de León

Before we start an in-depth discussion of the topic, let’s define our frame of reference. UNICEF’s 1997 State of the World’s Children Report says: “Children’s work needs to be seen as happening along a continuum, with destructive or exploitative at one end and beneficial work promoting or enhancing children’s development without interfering with their schooling, recreation and rest at the other. And between these two poles are vast areas of work that need not negatively affect a child’s development.” International conventions define a child as aged 18 and under. There is no universally accepted definition of child labor. In general, the term refers to work done by children that harms them or exploits them in some way — physically, mentally, or by blocking access to education.

There are millions of child workers across the globe. Even in the United States, children work in a variety of sectors. UNICEF reports that child labor is increasing in the United Kingdom and the United States because of growth in the service sector and the need for a more flexible work force. However, it is the plight of the hundreds of thousands of children working in U.S. agriculture that brings into clear focus the child labor violations in the United States.

In 2000, Human Rights Watch studied the problems of child labor in U.S. agriculture (Fingers to the Bone report, www.hrw.org/reports/2000/frmwrkr/frmwrk006.htm). Hundreds of thousands of children and teens labor each year in fields, orchards and packing sheds. They pick lettuce and cantaloupe, weed cotton fields and bag produce. Many begin their workdays either in the field or en route to the fields in the middle of the night. Twelve-hour workdays are common.

In addition to long hours, the report emphasized, “agricultural work is the most hazardous and grueling area of employment open to children in the United States.” (Fingers to the Bone, P. 1 of Summary). Children in U.S. agriculture are routinely exposed to dangerous pesticides, sometimes working in fields still wet with poison, often given no opportunity to wash their hands before eating. They risk heat exhaustion and dehydration. Often enough water is not provided to accommodate the conditions. They suffer injuries from sharp knives, accidents with heavy equipment and falls from ladders. Repetitive motions in awkward and punishing poses can interfere with the proper growth of their bodies. Lack of sleep and exhaustion increase their risk of injuries. Their schooling is affected by long and tiring working hours. Only 55 percent of them will graduate from high school. Depression affects them more often than other minors, a reflection of the cumulative stresses and burdens in their young lives. (Fingers to the Bone, P. 2 of Summary)

(Continued on Page 3)
Message from the Chair

By Craig B. Bluestein

Many of us have risen to the challenge to bring in more members! Since the summer of 2006, we have increased our membership by approximately 22 percent, which makes for more input, a better list-serve, and more persons looking out for the rights of children.

Panelists, including young people, attorneys, educators and mental health professionals, provided a highly educational and informative day at our annual fall conference on Nov. 20, 2006. At the conference, which was quite well attended, we especially enjoyed hearing from the panel of young adults who openly and honestly told their stories about what it was like to be a product of foster care, how their guardian ad litem was helpful or not helpful to them, what they wish would have occurred in their lives, and their plans for the future. Rounding off the luncheon break was a mini post-high school/college fair, at which representatives from various schools spoke to our attendees about what they have to offer young adults as they “age out.”

We heard from attorneys on aging out issues, along with college and school representatives who discussed their individual programs including the special programs available to many. It was incredible to hear of some of the programs available to our young clients — some of which can be attended for free!

Be sure not to miss our next seminar, already in the making. Our April 20 “Current Issues for Child Advocates” conference will be highly informative and a must for all those in the field. Case law and hot topics in Dependency and Delinquency law will kick off the day, bringing you up-to-date in about an hour and a half, and relieving you of burning the midnight research oil. Following that will be a panel of judges from around the state who will confer with the crowd on key issues based on emerging trends, tumultuous case law and new rule enactments. This is always instructive, controversial, and once again will be spearheaded by Judge Stephanie Domitrovich of Erie County, which is home to a noteworthy and controversial assisted reproductive technology case. The Child Advocate of the Year Award will be presented to a person who has gone above and beyond in his/her dedication to kids this past year. What would the conference be without a full discussion of the new Dependency Rules, which will have been in effect for almost three months by then, probably with a great deal of disagreement as to what they mean and how they are being implemented? Do we now have consistency throughout the state? Come and hear about it, and better yet, give us your two cents about the new rules. Finally, an ethics game show of sorts will end the day in an educational — one ethics credit — and entertaining kind of way. The day is sure to be a winner. Sign up early as there is only so much room at the PBI Center in Mechanicsburg.

A reminder once again to all that PBA Committee/Section Days are on April 25, 2007, in Camp Hill at the Radisson Hotel; Aug. 3, 2007, at Seven Springs Mountain Resort in Champion; and Nov. 29, 2007, at the Holiday Inn East in Harrisburg.

Thanks to all of you for what you do for those who cannot speak for themselves. Be careful out there and keep making law to benefit the kids!

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The Children’s Rights Committee invites members to submit material for publication in the newsletter. Please contact the editor, Patricia Dervish, at (610) 439-8780, or e-mail: patriciadervish@lehighcounty.org.
Child Agricultural Labor in America: Uncharted Territory

(Continued from Page 1)

Child labor in the United States is regulated by the Fair Labor Standards Act (hereinafter “FLSA”). This statute is designed to set the parameters around child labor. The report of Human Rights Watch, however, states that young workers are not being protected by the FLSA. Children working on farms may be employed at a younger age than other working children. Employers may also work them for longer hours. In all other occupations, children under the age of 16 are limited to three hours of work when school is in session. The statute does not limit the number of hours a child may work on a farm. Further, juveniles in agriculture may engage in hazardous work at the age of 16 while for non-agricultural occupations the minimum age for hazardous work is 18. Finally, the FLSA does not require overtime pay for agricultural work as it does for other occupations. (Fingers to the Bone, P. 2 of Summary)

Human Rights Watch opines, “FLSA’s bias against farm worker children amounts to de facto race-based discrimination because an estimated 85 percent of migrant and seasonal farm workers nationwide are racial minorities.” The report notes that this discrimination raises serious concerns under the Equal Protection Clause of the U.S. Constitution and may violate numerous provisions of international law. It also points out that farm worker children are not legally protected as other working children with a “doubly discriminatory effect against Latino children that leads to deprivation of other rights, most notably the right to education and the right to health and safety.” (Fingers to the Bone, P. 2 of Summary)

To compound the problem, the 2000 report states, “The failings of the FLSA are not the only ways that the United States leaves its young farm workers unprotected.” (Fingers to the Bone, P. 3 of Summary) The protections provided by the Occupational Safety and Health Administration (OSHA) regulations do not apply to farms with fewer than 11 employees. Further, the Environmental Protection Agency (EPA), charged with protecting farm workers from the hazards of pesticides, tests contamination levels on adult males and not on children. The EPA has not addressed the fact that children’s bodies are typically both smaller than adults’ bodies and developmentally more vulnerable to pesticide-related damage. (Fingers to the Bone, P. 3 of Summary)

Even the laws that do exist are not adequately enforced. Many states don’t have minimum age requirements for children working in agriculture. All but a handful of states perform no enforcement whatsoever regarding juveniles in agriculture. When violations are discovered and cited, growers frequently escape accountability by hiding behind the farm labor contractors they employ.

The result of these weak laws is that, as a practical matter, “farm-working juveniles have second-class status: they enjoy fewer rights than their non-farm-working peers ... They are vulnerable to occupational injury and illness because their jobs are dangerous; they are worked too hard because employers don’t have to limit their hours; and they are underpaid because the growers and farm labor contractors can get away with it.” (Fingers to the Bone, P. 3 of Summary)

Human Rights Watch is of the opinion that the widespread exploitation of adult workers contributes to the precarious situation of their sons and daughters who also must work in the fields. In the report, there is a recommendation for Congress to amend the Fair Labor Standards Act to protect all children equally. This means imposing for the first time, limits on the number of hours children aged 15 and younger can work in agriculture when school is in session. It is also emphasized that farm workers’ families need assistance on all fronts in order to “ensure that all children in the United States, including the children of agricultural laborers, have the possibility of a safe, dignified, and healthy start in life.” (Fingers to the Bone, P. 4 of Summary)

Human Rights Watch is not alone in this call for action. Professor Marvin J. Levine in his book, Children for Hire — The Perils of Child Labor in the United States (2003), emphasizes the special peril for children working in agriculture. He states, “There are multiple dangers inherent in almost all aspects of agricultural production: the operation of complex and powerful machinery, the use of toxic chemicals, being in close proximity to unpredictable animals, and facing the awesome power of the weather and ungrounded electricity.” (Chapter 8 — Sweatshops in the Fields) Children are most at risk because of their inexperience, lack of safety training and adequate supervision, and their desire to please their families and their bosses.

Levine makes many specific suggestions to begin ameliorating this indefensible treatment of young people in agriculture. A few are highlighted here:

1. First, “enforcement of the Fair Labor Standards Act and state child labor laws need to be strengthened. Exemptions in the FLSA that allow children in agriculture to work with pesticides and heavy machinery need to be stricken from the law.” (Chapter 8 — Required Measures)

2. Levine insists on the need for continued and improved injury surveillance. “Agriculture perennially has one of the highest work death rates of industries, but due to lack of reporting requirements for such accidents, there is no primary up-to-date source of accident data to guide prevention efforts.” (Chapter 8 — Data Deficiencies and Needs) We must find a way to keep our children in agricul-

(Continued on Page 4)
3. Third, child labor laws in agriculture have remained the same as they were when enacted many decades ago. They need to be reexamined and rewritten. Distinctions between small family farms and giant agribusinesses should be eliminated to offer maximum protection to all children.

4. Finally, the educational needs of children working in agriculture must be protected.

In summary, children in agriculture are a neglected sector of our society. Justice will only come through the enforcement of existing laws, the enactment of new laws based on concrete evidence, and the emphasis in public policy that all adults are responsible to safeguard the rights of children.

Alma S. de León is an administrative law judge who has worked in Pittsburgh since 1994. She has been a member of the newsletter subcommittee for three years and has contributed articles about zero tolerance policies in public schools, resegregation in the school system and the impact of land mines on children living in war-torn countries. Her passion is reading and she enjoys writing articles on social concerns.

What it Means to me to be a CASA Volunteer

By Karen E. Rimmell

“You cannot hope to build a better world without improving the individuals. To that end each of us must work for (our) own improvement and at the same time share a general responsibility for all humanity.”

Marie Curie (1867-1934)

To me, being a CASA volunteer means that I have been given the greatest opportunity to not only improve my own knowledge and understanding of the deep wounds children suffer from neglect and abuse. It also means that I have accepted an even greater responsibility to advocate in court for these children who suffer severely and often for a very long time. To serve as a CASA means that I serve to make a difference — a positive difference in a child’s life, in a child’s family and in our community at-large.

I am privileged to advocate for two special needs children, ages 5 and 7, who have been severely abused and neglected their entire lives. These children have been admitted to more than six hospital emergency rooms, more than five times each. They were admitted with inconsistent and often-times fabricated medical histories being reported to and recorded by medical personnel, who were unable to link the inconsistencies. These children have been receiving community and mental health services from more than five providers for most of their lives, again, without accurate historical medical and mental health treatment records, resulting in inconsistencies in what services have been provided and what services ought to be considered. Mother forcibly admitted the oldest child, now 7, into our local psychiatric hospital on seven separate occasions, usually around the holidays. The first admission was before the age of three.

I am privileged to be able to advocate for these two children and to focus solely on their cases — to piece together a lifetime of medical and mental health documentation, school records and various other primary and secondary data, presenting a factual historical foundation the court can reference when considering the most appropriate disposition of their cases.

It is my passion to advocate for these two children, to make the greatest efforts to assist the court in identifying risk factors, to eliminate further inconsistencies in historical records, so that these two children may experience greater safety and security in their lives. I volunteered to be trained and to serve as a CASA, hoping to build a better world by improving the circumstances for at least one child. I feel honored and privileged to serve on behalf of these two children and to speak up for them, as loudly as I can.

The author is a CASA volunteer in Pittsburgh. She holds her master’s degree in public administration and sits on the board of the CASA Program in Allegheny County and the Graduate School of Public and International Affairs at the University of Pittsburgh.

Melissa Protzek, Esq., executive director of the CASA program in Allegheny County, solicited this article from Ms. Rimmell for The Child’s Advocate.
We have seen some significant advances in protecting children’s rights in Pennsylvania over the last six months. On Oct. 19, the Supreme Court of Pennsylvania announced the creation of a new Office of Children and Families in the Courts (OCFC). In announcing this initiative, Chief Justice Ralph J. Cappy said, “It is of utmost concern to me and to my colleagues on the Supreme Court to see that our family courts do everything possible to guide people through the troubles that have brought them into our legal system, and to set them on course toward better and more stable lives. In each situation, the courts must act wisely and well. Nothing is more important than to restore stability to troubled families.”

It appears as if the creation of this new office as part of the Administrative Office of Pennsylvania Courts is to minimize the length of time that dependent children remain in temporary care.

The Chief Justice said that the goal of finding permanence for these children ... is part of a broader commitment of the Supreme Court to be more responsive to the needs of children and families.

The same week this was announced, the president judges in each of the Courts of Common Pleas in the commonwealth received a letter from Andrea Hoffman Jelin, who will be responsible for the day-to-day operations of the OCFC, under the direction and leadership of Justice Max Baer. Jelin outlined a three-tier plan to implement the goals of the OCFC. At the first tier, the judicial districts will convene Children’s Roundtables as part of the effort to create a statewide infrastructure. The Children’s Roundtable should be convened and led by a judge. It is anticipated that other judges, lawyers, administrators of child welfare agencies, academics and other child advocates will be around the table to discuss children’s issues. At the second level, Pennsylvania’s 60 judicial districts will be grouped to form Leadership Roundtables. At the third level, there will be a State Roundtable to facilitate intrastate communication and involve Pennsylvania in the dependency reform movement at the national level. The Supreme Court directed judges in the judicial districts to convene the Children’s Roundtables by November, to begin the work of the OCFC immediately.

(Continued on Page 6)
A NOTE FROM THE EDITOR

A Significant Autumn: CAPTA, Children’s Roundtables, New Dependency Rules and Changes in Criminal Law

(Continued from Page 5)

This initiative follows the promulgation of dependency rules by the Supreme Court in August 2006. These rules are effective as of Feb. 1, 2007. We provided a summary of the new rules in the summer edition of this newsletter. (Available online at www.pabar.org.) On Oct. 26, 2006, the Pennsylvania Children and Youth Solicitors Association presented on the rules to its members and to members of the Pennsylvania Children and Youth Administrators. In addition, across the commonwealth this past autumn, courts, solicitors and children’s lawyers have been meeting to review the rules and make the necessary changes to bring local practice and procedures into conformity with the rules.

The legislative and executive branches of our state government also advanced the rights of children this fall. In November, Gov. Rendell signed several bills into law that will have profound effects on our ability to protect children. House Bill 2670, now known as Act 146, makes several significant changes to Title 23, specifically the Child Protective Services Law and the Adoption Act. Up until Act 146, Pennsylvania was the only state not in compliance with the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA). The result of noncompliance was Pennsylvania’s inability to draw down almost a million dollars of CAPTA dollars and an additional $1.5 million of Children’s Justice Act monies, all of which can be used to further children’s issues in Pennsylvania. By signing HB 2670, the governor brought Pennsylvania into CAPTA compliance and eligibility for these monies. The changes are effective in May 2007.

Summarizing the significant provisions of the new law, Act 146 requires the Department of Public Welfare to establish three citizen review panels across the commonwealth to examine state and local agency policies, procedures and practices in the area of child welfare. These panels will also review child fatalities and near-fatalities. The Department of Public Welfare will report annually on the activities of these panels. The bill also amends the Adoption Act to create new grounds for termination of parental rights (23 Pa. C.S.A 2511). Specifically, parental rights can be terminated when a parent has been convicted of criminal homicide, aggravated assault, or an attempt, solicitation or conspiracy to commit these crimes where the victim was another child of the parent. The bill requires mandatory reporting for health care providers to the appropriate county agencies when they are involved in the delivery or care of infants born and identified as being affected by illegal substances. Act 146 requires the Department of Public Welfare to report annually to the General Assembly on the operations of the central register of child abuse and on the operations of child protective services provided by county agencies.

Finally, there are changes in the criminal law. On Nov. 29, Gov. Rendell also signed Senate Bill 1054, now known as Act 179. This Act provides for background checks on prospective employees applying to work in occupations with a significant likelihood of regular contact with children, clarifying the issues of when criminal and Child Line checks are required. Act 179 changes the situations under which a mandated reporter must report child abuse, requiring mandated reporters to report regardless of who is the alleged perpetrator, and even when the child does not directly come before the mandated reporter. It also increases the criminal penalties for mandated reporters who willfully fail to report child abuse. Act 179 expands the definition of Endangering the Welfare of a Child to make it an offense to violate a duty of care both to those who employ or supervise a parent, guardian, or other person supervising the welfare of a child as well as the person directly responsible for a child. Act 179 provides for more detailed information on the Internet for those sex offenders required to register under Pennsylvania’s Megan’s Law.

In November, the governor also signed Senate Bill 944, known as Act 178 — Pennsylvania’s Jessica’s Law. This law doubles the criminal penalties for sexual convictions for victims under the age of 16. James Martin, president of the Pennsylvania District Attorneys Association, commended the Senate on behalf of district attorneys across the commonwealth for recognizing the moral and social obligation we all have to protect our children through the passage of these laws.

We look forward to 2007, to the implementation of these significant legislative and judicial initiatives, and our continuing advocacy for the children of Pennsylvania.

Patricia H. Dervish is the senior deputy district attorney at the Child Advocacy Center/director of training, Lehigh County Office of Children and Youth Services, and editor of The Child’s Advocate.
Photo Highlights from the Nov. 20 Children’s Rights Committee Training Program on Dependent Children

(from left) Kelly Ace, member of the seminar planning sub-committee; CRC Chair Craig B. Bluestein; Paula Plageman, Kutztown University; and CRC Co-Vice Chair Jessica Holst

(from left) Patricia Cochran, member of the seminar planning sub-committee; Dr. Kasey Shienvold, Riegler, Shienvold & Associates; and Bonnie Seeley, Independent Living Coordinator, Cumberland County Children and Youth Services

(from left) CRC Chair Craig B. Bluestein and Todd W. Leister, Admissions Officer, Pennsylvania College of Technology, Williamsport

These attendees appreciated the time spent with their colleagues.