

PRO BONO MATTERS

Pro Bono Matters to Farmworkers in Pennsylvania

By Francine J. Lipman*

Every year almost one million farmworkers plant, cultivate, harvest, and process fruits, vegetables, nuts, poultry, and shellfish in America. Farmworkers are the engine that drives the agricultural sector of our economy, generating billions of dollars of domestic and foreign revenues and millions of jobs. In Pennsylvania almost 50,000 migrant workers are the lifeblood of the state's vital agriculture industries, including mushrooms, apples, peaches, cherries, and strawberries.

Farmworkers are predominately 30-something-year-old married men whose families live back home in Mexico. More than 60% of Pennsylvania farmworkers live in poverty in substandard housing and—ironically—suffer food insecurity. Despite providing healthy and affordable food to the world, these workers often lack the cooking facilities, transportation, time, and money necessary for a healthy diet. Many of them hold H2A visas and are classified as “guest workers” or noncitizens admitted temporarily to work in agriculture if U.S. workers cannot be found to perform the job. Tax issues facing H2A visa holders are unusually challenging and complex, especially given the demographics of the population. While an H2A visa holder qualifies for a Social Security number and should receive a Form W-2 from her temporary employer, she is not subject to federal withholding or Social Security and Medicare taxes. Not surprisingly, affordable and competent tax preparation assistance for these workers—who work long hours and live in remote, rural areas, without transportation—is a serious and persistent problem.

Lany Villalobos's job is to provide these farmworkers with tax education and outreach. Lany, a 2014–2016 Christine A. Brunswick Public Service Fellow, credits her years of experience in Volunteer Income Tax Assistance (VITA) programs with providing a strong foundation in tax and with helping her earn her fellowship. Society is enjoying the fruits of her labor.

In Lany's own words ...

NQ What inspired you to apply for the Christine A. Brunswick Public Service Fellowship?

LV I attended law school convinced I wanted to be a nonprofit immigration attorney. During my work with nonprofit immigration services in law school, I saw a great need for legal assistance in tax matters, particularly among English (as their) Second Language speakers. Immigrants often had questions about their tax liabilities or tax preparation, and the prevalence of unscrupulous or incompetent tax preparers was and continues to be a pervasive problem in immigrant communities. Realizing I knew very little about income tax matters, I began volunteering during my first and second years of law school at VITA sites in Kennett Square, Pennsylvania and North Philadelphia that served primarily Spanish-speaking taxpayers. My VITA experience facilitated my strong foundation in the fundamentals of tax compliance that continues to be essential to my work now as an attorney at a Low-Income Taxpayer Clinic (LITC). It also sparked my interest in tax law. Even though tax law was not the first area of law that came to mind when I thought about the public interest legal

field, I found I could still work with low-income immigrant communities and address a significant gap in legal services. Fortunately, the clinical director of the LITC at Villanova University School of Law, Professor Keith Fogg, is a persistent advocate in the need for representation of low-income taxpayers. Professor Fogg introduced me to the Christine A. Brunswick Public Service Fellowship, and provided invaluable mentorship to guide me through the fellowship application process.

NQ Tell us about the area your clinic serves.

LV The LITC of the Pennsylvania Farmworker Project of Philadelphia Legal Assistance (PLA) serves Philadelphia county residents and farmworkers throughout the state of Pennsylvania. PLA is one of two organizations in Pennsylvania that provide legal services to migrant and seasonal farmworkers, particularly H2A workers, employed in mushroom farms, apple orchards, turkey farms, Christmas tree farms, nurseries, and other agricultural industries in Pennsylvania. Because of the nature of their employment, farmworkers often migrate from state to state for work or, in the case of H2A workers, travel from abroad on temporary agricultural work visas to Pennsylvania. These migrants work long hours, often live in employer-provided housing with limited access to U.S. postal service and the Internet, and are mainly Spanish speaking. Their isolation in agricultural industries primarily located in rural areas makes it difficult to access information, legal assistance, or affordable and competent tax preparation assistance.

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NQ How does your service area affect how your clinic operates?

LV Because our LITC serves migrant and seasonal farmworkers throughout Pennsylvania, we travel to visit farmworkers at their employer-provided housing to do outreach on employment rights and taxpayer rights and responsibilities. Through our outreach, we have found that many farmworkers, especially H2A workers, do not realize they may have tax filing obligations let alone know where to turn to for competent tax preparation assistance. The few H2A workers who have filed tax returns with the assistance of an employer-provided preparer or paid preparers have often paid high tax liabilities when there was no filing obligation or when the inclusion of a spouse and dependents supported by the H2A worker would have reduced the tax liability to zero. Our outreach efforts educate farmworkers about tax filing requirements and the availability of free tax legal services at the LITC. Because our LITC is located in Philadelphia, and given the distance and rural locations of farmworker housing, we do outreach

efforts to local legal service providers to inform farmworker communities about our LITC services.

NQ Can you give examples of the types of tax issues you deal with in providing tax assistance to low-income taxpayers?

LV I handle a range of tax issues that are common in many LITCs. At the moment, my caseload primarily consists of collection issues resulting from cancellation of debt income, underreported income, early withdrawals from retirement accounts, joint and several liabilities, and dependency and credit disallowances. The primary tax issues for most of our H2A workers are nonfilers and tax liabilities resulting from incorrectly filed tax returns that fail to account for spouses and dependents residing out of the United States.

NQ What has been your most rewarding experience as a Fellow?

LV Our LITC only recently became a tax controversy clinic (as of January 2015). As a result, I am

thankful to be able to participate in its creation and formation as the full-time LITC attorney. Even though I am a young attorney and new fellow, PLA and my supervisor value my input and allow me to be an active participant in the creation of procedures and priorities of the new LITC.

I am also grateful to be hosted at Section conferences throughout the year as part of the fellowship, where I meet both new and more experienced practitioners working in the nonprofit, private, and government sectors. The Section conferences provide important and practical information on issues relevant to our LITC clients.

But the most rewarding part of my work is doing tax community education workshops with low-income taxpayers and service providers. Taxpayers all too often receive inaccurate tax information and pay exorbitantly high fees for basic tax preparation. Taxpayers and service providers are incredibly thankful for the information and clarity provided during the workshops and the referrals to nearby VITA sites for free tax preparation assistance. It is very rewarding to receive phone calls from taxpayers referred by our workshop attendees who found our information helpful.

NQ What has been your biggest challenge in the position?

LV The biggest challenge in my position so far has been how to address the gap in competent and affordable tax preparation assistance for farmworkers living in rural communities in Pennsylvania. Farmworkers may arrive in Pennsylvania after the end of the filing season, which means that most VITA sites have closed for the season. Even if there is available VITA assistance, the site is often located at a significant distance from work sites and employer-provided housing. H2A workers in particular rely on employer-provided transportation, making it difficult to access a VITA site in another city from a small, rural town in Pennsylvania.

Another issue arises with refunds and inconsistent addresses. Many farmworkers lack bank accounts, and with no direct deposit option refunds are issued by check at the address provided on the tax return. However, farmworkers frequently relocate to follow different crop seasons and they never receive their tax refunds.

The Affordable Care Act has also added another point of consideration for farmworkers who are lawfully present in the United States. For instance, H2A workers may be required to have health coverage during their temporary employment in the United States, if they do not qualify for an exemption. During all of our outreach efforts not a single H2A worker knew about this requirement or the potential penalty, or Shared Responsibility Payment.

This confusion and complexity make farmworkers particularly vulnerable to fraudulent and incompetent paid tax preparers, who prey on their isolation, language barriers, lack of information, and lack of access to services.

NQ Do you have any immediate plans after the Fellowship?

LV I will be relocating to the greater Washington, D.C., area after the end of my fellowship to join my family. I am committed to working as a public interest attorney even after my fellowship at PLA, and I hope my work continues to involve direct representation of low-income individuals.

NQ Do you have any advice for lawyers or law students interested in public service or pro bono work?

LV Be open to public interest tax law. I never imagined myself doing tax work and never understood that tax issues are a meaningful part of poverty law. However, the need for competent tax preparation and legal assistance is vast, especially among immigrant communities. Tax liabilities

and refunds have enormous economic consequences for low-income taxpayers, who rely on wages, Social Security benefits, and annual tax refunds to meet basic living expenses. I encourage law students to volunteer in VITA programs to gain experience through face-to-face client interaction and interviews, and to learn substantive tax law. For those interested in applying for a fellowship, find your passion—whether it is a particular taxpayer demographic, a particular underserved location, or a particular area of tax law. Your passion will come through in your application, your interview, and in time your work serving the public good. ■



Five of the Section's Public Service Fellows at the 2015 May Meeting. Clockwise from top left: Susanna Ratner, Patrick Thomas, Anna Tavis, Lany Villalobos, Jane Zhao

Since 2009, the Section has funded two Christine A. Brunswick Public Service Fellows each year, including these amazing young lawyers. Details about the Fellowship are available at <http://www.americanbar.org/groups/taxation/awards/psfellowship.html>.

2009–2011

Laura Newland (AARP's Legal Counsel for the Elderly, Washington, DC)
Vijay Raghavan (Prairie State Legal Services, Rockford, IL)

2010–2012

Douglas Smith (Community Action Program of Lancaster County, PA)
Katie Tolliver Jones (Legal Aid Society of Middle Tennessee and the Cumberlandands, Nashville, TN)

2011–2013

Sean Norton (Pine Tree Legal Assistance, Inc., Portland, ME)
Anna Tavis (South Brooklyn Legal Services/Immigrant Workers' Tax Advocacy Project, New York, NY)

201–2014

Ana Cecilia Lopez (University of Washington, Low-Income Taxpayer Clinic, Pasco, WA)
Jane Zhao (Center for Economic Progress, Chicago, IL)

2013–2015

Susanna Birdsong (National Women's Law Center, Washington, DC)
Susanna Ratner (SeniorLAW Center, Philadelphia, PA)

2014–2016

Patrick Thomas (Neighborhood Christian Legal Clinic, Indianapolis, IN)
Lany Villalobos (Philadelphia Legal Assistance, Philadelphia, PA)

2015–2017

Daniel Knudsen (Oklahoma Indian Legal Services, Oklahoma City, OK)
Frank DiPietro (Ronald M. Mankof Tax Clinic and the Center for New Americans, Minneapolis, MN)