
HMONG FARMERS: IN THE MARKET AND ON THE MOVE

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I. INTRODUCTION

Family farming is not new to the Hmong people. The Hmong lived as farmers in the mountain region of northern Laos in Southeast Asia for decades prior to immigrating to the United States as political refugees after the Vietnam War. The growing participation of Hmong farmers in American agriculture is highlighted in this article. With that increased participation comes an increase in the need for education about legal issues that can arise in the course of their farming business, and an increase in the need for attorneys able to work with Hmong family farmers to address those issues. Most of the legal issues identified in this article are not unique to Hmong family farmers; they have long challenged conventional American family farmers. However, making the Hmong farming experience unique and particularly complex are the additional barriers to success, common in other immigrant farming communities, which they must face. Despite the added challenges, the Hmong are motivated to enter into agriculture. This article will discuss the motivations of the Hmong to farm, some of the identifiable trends for Hmong involved in farming today, and barriers to success. Then, I turn to take a closer look at two examples of the most popular trends for the Hmong participating in agriculture, farmers' markets and contract poultry production.

In the end, this article is perhaps best described as an argument for the necessity of legal education to the Hmong community, to ensure their continued growth and vitality as family farmers. This article is being presented as part of a continuing legal education seminar to acknowledge the 20 years of Farmers' Legal Action Group's (FLAG) work with family farmers. Hopefully, it acts as a reminder that legal education can be as strong of a tool in legal advocacy today, as it was 20 years ago. Education on legal issues to family farmers continues to be an important technique for providing direct services to the diverse family farming community.

II. MOTIVATIONS FOR ENTERING AGRICULTURE

Family farmers are leaving agriculture every day as the system becomes more industrialized, as corporate concentration and vertical integration dominate certain sectors of production, as profit margins and market opportunities decrease, and as land values rise giving other income opportunities to farmers. In contrast, Hmong families are entering agriculture. There are both social and economic motivations for their steadily emerging presence.

A. Social and Cultural Motivations

“For new immigrants, farming is engraved in their culture.”¹ Prior to immigrating to the United States, many Hmong subsisted as farmers in the mountain region of northern

¹ Devon Idstrom, *Linking New Immigrants to Farming Opportunities*, Community Divided, Federal Reserve Bank of Minneapolis, Issue No. 1 (2003), available at <http://www.minneapolis.fed.org/pubs/cd/o3-1/farmers.cfm> (quoting Nigatu Tadesse, prior to his current position as USDA FSA Minnesota State Office Outreach Coordinator).

Laos.² Their primary farming practice was slash and burn.³ That process created nutrient rich ash to fertilize the soil on which hand-planted vegetables, rice, and poppies were produced.⁴ This production practice also exhausted the soil and necessitated regular migrations of the clans within the mountain region to new farmland.⁵ For many in this community where migration was common, leaving Laos after the Vietnam War meant leaving the land, but perhaps more importantly, the agrarian lifestyle that was a foundation of their people. After immigrating to the United States, many Hmong settled in urban communities, yet their agrarian roots continued to be a motivating factor behind entry into family farming.⁶

For many Hmong, family farming is viewed as exactly that, a family farming together.⁷ It is an opportunity for grandparents to remain productive and contributing members of the family's business and to bestow knowledge and wisdom on their children and grandchildren. Additionally, it is a way for parents to work with their children and to build in them the same love of the agrarian lifestyle that they have.⁸ Relatives can play a vital role in a family farming operation. In some cases, farmers may rent their land for production from a relative, they may have the assistance of other relatives on the day of the market, and they many provide financial support to one another rather than seeking funding from outside sources.

² Choua Ly, Comment, *The Conflict Between Law and Culture: The Case of the Hmong in America*, 2001 Wis. L. Rev. 471 at 473.

³ *Id.*

⁴ *Id.* at 473-74. Opium was produced to be used as a traditional source of medicine, but also as a cash crop sold to the Chinese, Vietnamese, and colonial French for the drug trade. *Id.*

⁵ James R. Coben, Article, *Building a Bridge: Lessons Learned From Family Mediation Training for the Hmong Community of Minnesota*, 40 Fam. Ct. Rev. 338, 340 (July, 2002).

⁶ Olson, Yang, Tadesse, Chang, Yang, and Lee, Staff Paper Series, *Results of a Farm and Market Survey for Hmong Specialty Crop Farmers in the Minneapolis/St. Paul Metro Area*, Dept. of Applied Econ., College of Ag, Food, and Enviro. Sci., University of Minnesota, at 2-3 (December, 2003) available at <http://www.apec.umn.edu/faculty/kolson/research.html>. Over 80 percent of the individuals surveyed in the Farm and Market Survey responded that they had been farming for 10 or more years in another country. Additionally, the most common reason for becoming a farmer was because it was a hobby or part of their culture.

⁷ One farmers' market farmer put it bests saying, the market "is a place that has brought my family together and has taught my four children what family is. We work together." Amy Hang, *Hmong Farmers Key to St. Paul Farmers' Market Success*, *Hmong Times*, September 1, 2002 (quoting Der Thao, a Hmong farmer who has been selling at the St. Paul Farmers' Market for ten years).

⁸ *Id.* at 2.

B. Economic Motivations

According to the 2000 U.S. Census, approximately 33 percent of the Hmong population live below the federal poverty line.⁹ The percent of Hmong children in Minnesota living below the federal poverty line is even more staggering; 37 percent live below the poverty line, and 73 percent live at less than 200 percent of the poverty line.¹⁰ Hmong are following the hope of economic opportunity into family farming. Farming is seen as a way to contribute to the family through income and supplementing their family's food.¹¹

Perhaps the motivations can be most simply put: "Farming is an important part of Hmong culture, it is a source of community pride and self-esteem, and a way to make a living."¹²

III. TRENDS: WHERE, HOW, AND WHAT HMONG ARE FARMING

Driven to enter agriculture, the Hmong family farmers of today are taking advantage of opportunities in the market place and developing their businesses based on consumer desires. The identifiable trends of Hmong farming businesses are primarily defined by where they are farming, what they produce, and how they market their products.

- Minnesota. There are an estimated 300 Hmong farmers in the Minneapolis/St. Paul metro area.¹³ Hmong farmers, including those living beyond the metro area, are participating in large numbers in farmers' markets. They are producing for their families, their community, and for the consumers interested in not only supporting local producers, but also looking for new and unique ingredients. The average Hmong farm growing for a farmers' market will have many different varieties of crops, although most fall into the categories of vegetables and cut flowers.¹⁴ The farm land they are produced on are generally about three to five acres.¹⁵ Small by comparison to conventional corn and soybean growers in the

⁹ Art Hughes, *Hmong in Minnesota Still Face Language and Cultural Barriers*, Minnesota Public Radio, October 26, 2004, available at http://news.minnesota.publicradio.org/features/2003/07/23_hughesa_census/.

¹⁰ Children's Defense Fund Minnesota, *Minnesota Children and the 2000 Census: Poverty and Ethnicity* (2003), available at www.cdf-mn.org/CensusData2000/MNChildPovertyEthnic.pdf.

¹¹ Olson, *supra* note 5, at 2.

¹² Kristina Canizares, *Hmong American Community*, Oxfam America, February 5, 2003, available at <http://oxfamamerica.org/global/art4163.html> (quoting Chukou Thao, then director of Hmong American Community).

¹³ *Id.* at 2.

¹⁴ On average, the Hmong farmers surveyed had 13 crops. *Id.* at 12-13. The variety of the crops is also interesting and notable: tomatoes, peppers, green beans, bitter melons, cilantro, squash, green onion, eggplant, long beans, cucumbers, lettuce, and potatoes, rutabaga, basil, sweet corn, lima beans, mustard, lemongrass, collard, broad beans, peas, radishes, leeks, garlic chives, cabbage, brussel sprouts, beets, pickles, dry onion, cauliflower, broccoli, and butterhead lettuce. *Id.*

¹⁵ Of the Hmong farmers surveyed, the median size of the farm was three to five acres. *Id.* at 3.

region. Ownership of farm land is not a prerequisite for many of the farmers growing for farmers' markets. Because the land requirements are minimal for the type of production practices many have, leasing land while living in the city allows for entry into agriculture, without the same kind of capital investment other beginning farmer operations have. That said, there can be a great deal of competition for available farm land around the metro area, either for rent or for purchase. And, leasing land for a farming business, particularly the small acreage used by some of the Hmong farmers, does not provide the same kind of security in the future of their farming operation.

- California. Over 900 Hmong farming families operate small-scale operations in Fresno County, California.¹⁶ Most are growing vegetables native to their Southeast Asian homelands.¹⁷ The market for their products continues to grow. They are producing and selling to their own communities and the broader community, interested in incorporating new elements into their cuisine.¹⁸
- Arkansas, Missouri, and Oklahoma. Hmong farmers are also moving to the Ozarks to engage in contract poultry production. This trend started about four years ago with the first groups of the community moving into the region. Today, there are approximately 500 families with poultry farms in the Ozark region.¹⁹ This trend is discussed in greater detail later in this article.

IV. BARRIERS TO FARMING SUCCESS

Family farmers face barriers to success in agriculture today including natural disaster, rising costs of production, slim profit margins, narrow marketing opportunities, regulatory complexities, and debt. With our focus on the Hmong farming community in this article, the following highlights some of the additional barriers that challenge Hmong farmers.²⁰ For example, it is obvious to those working with immigrant populations and

¹⁶ Fujimoto and Sandoval, *Central Valley Partnership: A Collaborative Multiethnic Approach to Organizing Immigrant Communities*, Symposium: Immigration and Civil Rights After September 11: The Impacts on California, 38 U.C. Davis L. Rev. 1021, 1027 (2005).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Howard Will, *Hmong Farmers Cry Foul, Sue*, Chicago Tribune, May 15, 2006.

²⁰ The farmers responding to the Farm and Market Survey noted two major barriers to success in small-scale vegetable and flower farming in Minnesota: lack of farming skills and knowledge, and language and cultural barriers. Olson, *supra* note 5, at 18-19. Other barriers included: access to land for lease, farmers' market rules or regulations, competition, access to land to buy, and a shortage of capital/credit. *Id.*

Regarding new immigrants generally, a 2003 Minneapolis Federal Reserve Bank report stated, "[n]ew immigrant farmers will continue to face challenges. Barriers to land purchase, financing

persons with Limited English Proficiency (LEP), communication and cultural barriers constantly need to be considered and addressed. In order to raise awareness of assistance and programs, access to resources and benefits, and provide advocacy, good communication and some level of cultural competency is vital. Additionally, individuals receiving government assistance through programs like Minnesota Family Investment Program (MFIP) and Supplemental Security Income (SSI) may not seek assistance from other sources or agencies for fear of losing the vital government assistance they are already receiving. Education on the eligibility for government assistance and how the program can legally interact is needed. A final example highly relevant to success in family farming are the issues around access to credit. Seeking financial assistance to purchase or expand a farming operation has always been a challenge for family farmers, although it has always been necessary. Perhaps it is the small scale of their operations to produce for farmers' markets in Minnesota, or the willingness to take risks for the chance of success and owning a piece of land in the Ozarks. The Hmong community is unique to the extent they finance their own operations through their immediate family and relatives. Sources for loans are relatives, rather than the Farm Service Agency (FSA) or private banks.²¹ Few small-scale Hmong farmers are familiar with USDA's loan programs through FSA.²² The history of the Hmong has created an understandable mistrust of the government, which is a significant barrier in farming when a great deal of information and services are through government agencies, like credit through FSA.²³ Hmong aware of FSA credit programs may be unwilling to apply for these programs because of their mistrust of the government. Education and outreach on access to credit issues is necessary in the Hmong community.

A great deal of information in this section is anecdotal in nature. These are things we have learned through our work with YeeLeng Hang, FLAG's outreach coordinator, Yimeem Vu of Minnesota Food Association, farm advocates working with Hmong farmers in financial crisis, and our own direct services. In addition, a great deal of the information regarding communication comes from materials provided by Blong Yang.²⁴

A. Communication

Communication skills vary greatly within the Hmong community. For example, some in the community speak and read both Hmong and English. Some can speak Hmong and English but cannot read either. Others can speak Hmong and English, but can only read

and marketing persist, and farmers who succeed in overcoming them must meet the additional challenge of opening new markets and increasing the scale of their operations and distribution.” Idstrom, *supra* note 1.

²¹ Olson, *supra* note 5, at 19-20.

²² *Id.*

²³ Another relevant example where both mistrust of government and concerns about interaction with government assistance may be in the context of seeking federal disaster assistance.

²⁴ Blong Yang, *Ensuring Meaningful Language Access for LEP Persons*, Presentation to FLAG, (2003) (presentation and outline). Mr. Yang presented these materials while working as an Equal Justice Works Fellow. He is now a solo practitioner in Minneapolis.

English. And, complicating communication are the several dialects of the Hmong language. With that kind of diversity, it is hard for attorneys to know how to provide service to the community.

The potential difficulties with communicating through translation of written materials or through oral interpretation are just part of the considerations when working to educate the Hmong community. How successful education efforts are may be tied to whether an organization chooses the right medium to communicate to the community—written materials, small or large group workshops, newspapers, or radio.²⁵

1. Use of Interpreters

The use of a Hmong-speaking interpreter for communication can be complicated for several reasons: accuracy, confidentiality, understanding, and cultural complexities. Being able to speak the language does not mean a person is qualified to be an interpreter. Word-for-word, or verbatim, interpretation may not identify cultural complexities. And, some individuals who speak limited English could be embarrassed to admit they do not understand what is being said, and so they may appear non-responsive, leading to misunderstandings.

The use of family members to interpret is a common avenue for communication in LEP communities. Most Hmong families have at least one member of the family who has some level of English proficiency, but the use of family members as interpreters can be difficult. For example, the family member with the ability to speak English may be a 12-year-old girl. It is obvious that explaining a complex part of the law would be extremely difficult, if not impossible. The accuracy of a child interpreting for the parent or grandparent who runs the farming business just cannot be assumed. A child's vocabulary alone would be inadequate to deal with a highly technical legal issue. This would not only be a problem with a child interpreter, but it is illustrative of the problems with accuracy and reliance on family members as interpreters.

Confidentiality is also a concern for legal practitioners and their clients. The bounds of confidentiality must be defined, particularly when communicating with LEP persons through interpreters. The use of qualified interpreters would be preferable to relatives or friends of a client, specifically because of their experience, professionalism, and rules of ethics. Many clients may be less forthcoming and less likely to seek assistance if they have to tell a relative about the problem in order to access the assistance. For example, several of the contract poultry farmers in financial crisis have said they feel ashamed and embarrassed by the situation they are in. That farmer may be less forthcoming if he or she is using a relative as an interpreter, and some of the essential issues of the situation may not come out.

²⁵ Farm Service Agency News, *Radio Reaches a Wave of Hmong Farmers*, August 2000, available at <http://www.fsa.usda.gov/pas/fsanews/html/2000/aug2000/hmong.htm>.

2. Translated Materials

Meaningful access to legal assistance and legal education by the Hmong community may require translation of important documents. However, achieving accurately translated materials is difficult particularly in Hmong. English words may not have equivalent words in Hmong. For example, to work on farm law issues with clients we must be able to talk about credit, but the Hmong language does not include a direct translation for the word “credit.” This problem can be even more difficult with specialized terms in the law. The difficulty of translating into Hmong is also complicated by the different dialects of the language. While dialects are usually mutually intelligible, a particular word can have different meanings depending on the dialect.²⁶ For example, in the context of reviewing and understanding a contract, misinterpretation of one word may have an impact on a particular legal issue.

B. Cultural Competency

Legal conflict and resolution barriers go beyond communication to the tension between Hmong cultural practices and American law.²⁷ Lack of cultural competency regarding this tension and other elements of the Hmong culture can be a barrier to providing legal assistance. Culture could be defined as, “the total life way of a people, the social legacy the individual acquires from the group. . . . Culture is a way of thinking, feeling, believing. It is the group’s knowledge stored up, in memories and books and objects, for future use.”²⁸ The Hmong culture is deeply rooted and complex.

One example of a cultural issue in the Hmong community which may influence how legal issues arise and are addressed, is the clan system.²⁹ The patrilineal clan system has survived destruction of the population during the Vietnam War³⁰ and the divided migration to America,³¹ to exist today as a structure for the community on issues from marriage and divorce to dispute resolution. Eighteen clans constitute the Hmong

²⁶ Angela McCaffrey, Article, *Don’t Get Lost in Translation: Teaching Law Students to Work With Language Interpreters*, 6 Clinical L. Rev. 347, 351-52 (Spring 2000).

²⁷ Ly’s article uses three Hmong practices to demonstrate the conflict between acceptable and long-standing cultural practices for the Hmong and the American legal penalties for each. The examples: marriage by capture, opium use for medicinal purposes, and shamanism, all carried criminal penalties, but the discussion on how the Hmong culture and American law can collide is a relevant consideration for our work. Ly, *supra* note 2, at 471.

²⁸ *Id.* at 356.

²⁹ Ly, *supra* note 2, at 474. Coben, *supra* note 4, at 339.

³⁰ Some estimates state the Hmong people lost nearly one-third of the population during the Vietnam War, including almost half of the males over the age of 15. Ly, *supra* note 2, at 476-77. The deaths were not solely the result of combat, but also the disease and starvation that were the result of the conflict. Coben, *supra* note 4, at 340.

³¹ Approximately 130,000 Hmong have resettled in the United States since 1975. Ly, *supra* note 2, at 478.

community in Minnesota.³² Clan elders have tremendous respect and power. Disputes between clans are often resolved through negotiation and mutual agreement.³³ A true commitment to attaining some level of cultural competency is a good goal for practitioners and groups working with this diverse community. To help address our cultural competency issues and better serve the Hmong family farming community, FLAG hired a Hmong-speaking outreach coordinator, YeeLeng Hang, as mentioned earlier.

To attempt to reconcile the conflict and tension in the area of divorce law, a training for family mediation was held in Minnesota for the Hmong community.³⁴ The paper summarizing the activities and results of that training provides a great deal of insight for practitioners working with the Hmong community.

V. A CLOSER LOOK AT HMONG PARTICIPATING IN FARMERS' MARKETS

Bustling farmers' markets play a favorite role in the Saturday mornings of many communities. They are booming in popularity and provide income and opportunity to many Hmong farmers.³⁵ Throughout Minnesota alone, there are 65 farmers' markets.³⁶ Hmong farmers have been participating as vendors in the farmers' markets for many years, and their presence continues to grow as they move toward marketing their products directly to the broader community.³⁷ Selling at a farmers' market can be hard work for farmers, requiring the efforts of the entire family. From planting and harvesting, to the delivery, set up, and selling of the goods at the market, it is a family enterprise requiring children, parents, and grandparents to work together.

To help markets run smoothly for the farmers and the consumers, farmers' markets set out the rights and obligations of the vendors in the farmers' market rules, a contract or an agreement between the market and the farmer, or producer association by-laws.³⁸ Market rules address everything from what can be sold and how it can be displayed to cleaning

³² Coben, *supra* note 4, at 339.

³³ *Id.*

³⁴ Coben, *supra* note 4.

³⁵ The number of farmers' markets nationwide has grown 111 percent from 1994 to 2004 according to USDA. USDA AMS, *Farmers Market Facts*, available at www.ams.usda.gov/farmersmarkets/facts.htm.

³⁶ USDA AMS, Marketing Services Branch, available at <http://www.ams.usda.gov/farmersmarkets/states/Minnesota.htm>.

³⁷ More than sixty Hmong family farmers sell at the St. Paul Farmers' Market alone.

³⁸ Neil D. Hamilton, *Farmers' Markets: Rules, Regulations and Opportunities*, National Agricultural Law Center, 2000, available at http://www.nationalaglawcenter.org/assets/articles/hamilton_farmersmarkets.pdf.

Where the source of the provision is not important, this article uses the term "market rules" to refer to all of these sources.

requirements for the stalls. By signing an agreement to participate in the farmers' market, a farmer commits to comply with the market rules. In addition, a farmer's participation in the market is also governed by local, state, and federal laws. Many market rules explicitly placed the burden of compliance with state, local, and federal laws on the market vendor. However, a farmer is obligated to comply with relevant laws whether or not the market rules indicate that compliance is necessary.

Farmers should first seek to understand the rules, then they should seek to find out whether the rules are being applied to all farmers. Understanding the rules of the market and applicable law can help farmers comply with the rules, prevent misunderstandings, and reduce their exposure to risks.³⁹ Understanding the rules can also help farmers know if they are being treated like other vendors at the market. If they are not being applied to all farmers, the farmer may want to raise this concern with the market manager, the producer association, or the governing body of the market, such as a Board of Directors. If the farmer believes the rules themselves are unfair, the farmer may seek a change in the rules, again by approaching the market manager, the producer association, or the governing body of the market. Below is a brief discussion of some common farmers' market rules that most often give rise to misunderstandings and conflict. This is an area where legal education and assistance can have a great effect on farmers participating in farmers' markets.

A. Access to Farmers' Markets

Each market has different guidelines to establish who can participate as a vendor in the market. Some require vendors to be a member of a growers' association, others require the farmer to sell a specific thing at the market they believe will be desirable, others consider applications to the market of a first-come, first-served basis. Most have a combination of provisions, which together create the eligibility requirements for participation in a particular market. The following are common examples.

- Farmers' markets are often created for the benefit of local farmers, to minimize the distance and travel required to connect the products with the consumer, and maximize freshness to the consumer. To accomplish that goal, many markets establish eligibility based on the location of the farm, garden, greenhouse, or residence of the farmer.
- To ensure diversity in the products sold at the market and to maintain the personality of a locally produced food market, some markets establish rules for the market population based on what products are sold. The ability to sell products at a market may depend on whether that product, or something similar to that product, is already being sold by a vendor at the market. A common provision is to create a "producer only" market.

³⁹ A longer, plain language educational piece discussing several provisions common to farmers' market rules is available through FLAG in the soon-to-be printed Understanding Farmers' Market Rules.

With limited market space and little turnover in some markets, savvy farmers may be able to target their production to meet the desired need at a local market. However, these requirements can also act as a barrier to entry into farmers' markets. Legal issues can arise when farmers are denied entry into a market, particularly around discrimination. And, enforcement of these provisions may require access by market management to producers' farms, creating another place where misunderstandings can arise.

B. Stall Assignments

Farmers' markets usually assign stalls so that each farmer will have a defined place to display and sell his or her items during the term of the contract. Markets have different rules for the process of assigning stalls to vendors, terms and times of occupation, how to address vacancies, and rules addressing the subleasing of stalls. The market rules should clearly spell out specific requirements. Stall assignments can be a contentious issue. Farmers may desire particular stalls for any number of reasons. Therefore, vendors often have questions about these rules. Education about the rules can be an important tool before conflict arises.

C. Dispute Resolution

Market rules generally set forth a means for resolving disputes. Disputes may be between vendors or potential vendors and the market, or disputes may be between two vendors. If the market rules do not set forth a formal means for resolving disputes, the market manager would likely try to resolve the dispute informally. Some market rules provide complaint procedures for farmers to follow. Other market rules establish a farmer committee to review disputes. Some markets have a formal process for resolving disputes and allow for appeal of decisions made by the market manager. Farmers' markets which are official units of government generally must provide vendors with due process of law, including appeals.

This is a particular area where American law can conflict with Hmong culture, especially if the dispute is between two Hmong vendors. As highlighted earlier in this article, dispute resolution involving members of different clans would likely require input from elders and some sort of negotiation and mutual agreement to the resolution. A dispute resolution provision provided in the market rules will govern how the dispute is formally resolved, usually involving the market manager.

D. Compliance with Applicable Laws

Depending upon the state, county, city, or town where the market is located, farmers may need to comply with laws regarding licensing and necessary permits, food handling and safety, collecting and reporting sales tax, labor issues, and farming practices. The market manager may be able to provide information regarding compliance, but it is the farmer's responsibility to discover and comply with the relevant laws. This may require contacting state and local agencies to find out the requirements and then taking the necessary steps to comply. This is another area where legal education and assistance can have a great effect on farmers participating in farmers' markets.

VI. A CLOSER LOOK AT HMONG FARMERS IN CONTRACT POULTRY PRODUCTION

Enticed by the dream of owning land, freedom from the city, supporting their families, and going back to their cultural roots as farmers, Hmong have been moving to the Southern United States to purchase poultry farms. This decision has meant financial ruin for some, according to several recent news articles.⁴⁰ Some of the experiences highlighted in the recent accounts are not new; family farmers have struggled with the risks involved with contract poultry production for decades. However, it is the added elements that have been reported that make the plight of the Hmong in this situation particularly wrenching. By all accounts, the loans and business plans involved were establishing a path to crisis, poverty, and failure from the outset. And, in some cases the timeline for that progression was only a matter of a couple of years, taking with it the life savings of some.

A. Contract Poultry Production Generally

Vertical integration in poultry production dominates the industry. Poultry growers are just part of the system, with little or no independence. They care for the birds, but receive the chicks from the company, the feed from the company, the medications from the company, and instructions regarding production and management decisions from the company. Hmong entering contract poultry production need to receive education regarding contract poultry production in order to be able to access their risks and the potential benefits before making the commitment to purchase property and accumulate substantial debt.

Many publications have been written to identify and educate farmers, their advocates, and attorneys about the risks and challenges of contract poultry production, as well as current protections in the law for producers. For a more complete discussion and expanded bibliography of sources, *see*, Susan E. Stokes, *The Dilemma of Contracting: Risk Management or Risky Business*, presented at FLAG CLE, June 12, 2006. Other notable materials are some of FLAG's publications (all available on our Web site, www.flaginc.org) including: *Assessing the Impact of Integrator Practices on Contract Poultry Growers*, published by FLAG, September 2001; *Contract Poultry Growers Have Rights Under Federal Law*, 2004, by Susan E. Stokes and Jill Krueger, also available in Hmong as translated by YeeLeng Hang, FLAG's Hmong Outreach Coordinator; *Your Poultry Contract is Cut Off Due to Plant Closing: What Should You Do?*, July 2003; and *Questions to Ask Before You Sign a Poultry Contract*, 2005, by Laura Klauke of RAFI-USA and Jill Krueger.

In addition, FLAG compiled a collection of grower education materials that have been distributed and presented during farmer workshops and advocate trainings to address many producer issues including common systems and terms for payment under poultry production contracts and company-mandated equipment upgrades. Grower Education

⁴⁰ Laura Yuen, *Farm of Failed Dreams*, St. Paul Pioneer Press, May 17, 2006; Witt, *supra* note 16; Crystal Cody, *American Dream: Immigrant's Nightmare*, Arkansas Democrat Gazette, May 14, 2006.

Materials, 2001, including *What's My Contract Got to Do With It?*; *Promises, Promises – How Much Money Will You Really Make?*; *Who is #1 and Do We Really Need the Ranking System Anyway?*; *Who Decides on the Proper Equipment? Mandatory Improvements for Poultry Operations*; *How Much Did Your Birds Really Weigh?*; *How Much Did Your Feed Really Weigh?*; *I'll See You in Court – Or Will I?*.

Recently, Jill Krueger from FLAG, along with Laura Klauke from Rural Advancement Foundation–USA (RAFI–USA) and Yimeem Vu of the Minnesota Food Association (MFA), presented on the subject of contract poultry production at the Hmong National Development National Conference on March 18, 2006. With the rush of Hmong to enter into poultry contracts, community members had some very specific questions about whether farmers can really make money and have the independence they are looking for. For example, when individuals hear reports of \$150,000 in income for a year on a poultry operation, they need to also inquire about whether that is net or gross income, since the high costs of fuel, production expenses, and mortgage payments can make the net income much lower than anticipated. Additionally, attendees raised the common belief in the community, that if they just work hard and are good farmers, they will make good money and pay off the debt and the poultry operation is just a means to getting the land.⁴¹ This has not been true for many farmers. More educational workshops and broader distribution of the legal education materials in the Hmong community is essential to raise awareness of the risks of contract poultry production and the protections in the law.

B. Hmong Farmers in Financial Crisis

Beginning in 2001, Hmong started moving from the communities they originally immigrated to when they left their homeland of Laos, predominantly the St. Paul/Minneapolis metro area in Minnesota; Fresno, California area; and Wisconsin, to the Ozarks area—Arkansas, Missouri, and Oklahoma in the southern United States. Motivated by a desire to own land and live in a more desirable climate, and possibly enticed by the advertisements in Hmong papers touting chicken farms for sale,⁴² the Hmong purchased poultry operations. Approximately 500 Hmong families now live in the Ozarks area operating poultry farms.⁴³ Many of the Hmong who moved south were not farmers, but individuals dreaming of being farmers. Most had worked for several years, some as professionals, some as factory workers or in the service industry, but all hoping to make their initial investment turn into a permanent home for their families.

These farmers have faced some of the common challenges of contract poultry production. However, most had no way to assess the risks without being educated regarding the

⁴¹ Many have also acknowledged that they are prepared to have one or more of the family members provide off farm income. However, what many don't know is that off farm income could be the only income for the family and it usually isn't enough to keep the farm operational.

⁴² The Classified section of both the Hmong Times and Hmong Today contain ads regarding poultry farms for sale on a weekly basis. "Have you ever dreamed of owning a poultry farm, business, or home in the sunshine state—Arkansas or Missouri?" Hmong Times, Classified Ads, August 16, 2004, at page 20.

⁴³ Witt, *supra* note 16.

history of poultry production before committing to the purchase and the move. Until recently, positive stories were the only stories reaching family back home, which enticed more families to move south and purchase poultry farms.⁴⁴ Until recently, community members were not considering these questions: If buying a poultry farm is such a great deal, why are there so many farms for sale, and what risks do I face?

Many families are now in a position of financial ruin after a very short period of time. Twelve families have already filed for bankruptcy.⁴⁵ In only a couple of years, individuals having invested their retirement savings, profit from the sale of their former homes, and in some cases money from relatives, and have watched those monies disappear.⁴⁶ As reported in the news articles, there are many contributing factors to the crisis situation of these farmers, including rising costs of fuel inputs. While each situation is unique, there are several common factors present in several of these cases, most of which are related to the loans farmers received to purchase and operate their farms.

- *Inflated appraisals.* Several farmers in financial crisis appear to have paid more for their farms than they were worth.⁴⁷ Reports and bankruptcy filings claim some values were inflated by 45 percent.⁴⁸
- *Exaggerated income projections on poultry production operation.* There are reports of banks adding 30 percent more to the income estimates provided by the poultry companies.⁴⁹
- *Inclusion of projected income from other sources.* For example, income from sale of poultry litter and income from acres not involved in poultry production.⁵⁰
- *Underestimated living expenses.* The family estimated living expenses for purposes of these loans do not appear to equate to the actual needs of the family, for example, a family of four living on nine dollars a day.⁵¹

Anecdotally, we have heard from farm advocates working with Hmong farmers in crisis that the farmers signed loan documents they were unable to read and understand. The purchasing individuals did not understand the documents they were signing to secure

⁴⁴ See Noah Vang, *More Chickens Mean More Hmong – More Hmong Mean More Chickens*, Hmong Times, Oct 1, 2004, at 9.

⁴⁵ Witt, *supra* note 16.

⁴⁶ Yuen, *supra* note 38.

⁴⁷ Although some note that the rush of Hmong into the region and the demand for purchasing poultry farms contributed to the increase in market value of many of the properties. *Id.*

⁴⁸ Yuen, *supra* note 38.

⁴⁹ Witt, *supra* note 16.

⁵⁰ *Id.*

⁵¹ *Id.*

financing for the purchase of the operation including the Farm and Home Plans, detailing the full plan of how a farming business operates. Experienced farm advocates who have been specifically trained to work with farmers on creating Farm and Home Plans, admit to the complexity.

One compelling question from these facts is, what would be the motivation for a bank to create loans that would fail? These loans were guaranteed loans. Loans provided by private banks, guaranteed by the USDA's Farm Service Agency for up to 95 percent of the loan amount if the farmer defaults. For making loans they would not otherwise make, FSA's guarantee substantially lowers the banks' risk. One possible motivation was that some of the loans were already in trouble under previous owners, and so converting them into new mortgages through guaranteed loans would provide protection to the banks, and higher prices meant higher interest revenue.⁵² The next compelling question might be, what was FSA's role in approving these guaranteed loans? One article reported an FSA employee who acknowledges that FSA may have known that the Hmong farmers were paying too much for their farms, and yet they guaranteed the loans.⁵³

The crisis continues for many Hmong poultry farmers and their families. Families in crisis are still just beginning to come forward and seek assistance. Many have said they feel ashamed of their position and that has kept them from coming forward sooner.⁵⁴ The community needs more support through attorneys, farm advocates, and social and community service organizations.

VII. CONCLUSION

There are many great organizations working with beginning, small-scale, and minority farmers. For example, in Minnesota, organizations such as the Minnesota Food Association and the Land Stewardship Project work specifically on education for family farmers, educating about the farming business, as well as production methods, marketing, and safety. However, legal issues will arise for Hmong farmers, and the need for legal assistance will increase. Education is a vital tool of legal assistance, but working with the Hmong community provides unique challenges. Comprehensive outreach to Hmong farmers will require written materials, workshops with farmers, one-on-one meetings, and broader education to the community and those who are considering moving into farming. Direct services is also a vital tool of legal assistance to the Hmong community. Practitioners concerned about the survival of family farmers must educate themselves on how to serve this growing community of family farmers. Greater numbers of practitioners with experience and expertise in agricultural law will be necessary to meet the needs of the growing Hmong family farming community.

⁵² *Id.*

⁵³ Yuen, *supra* note 38.

⁵⁴ Cody, *supra* note 38.