

## First Trial and Other UFW Los Angeles Memories 1974 -1975

While director of the Farm Worker Project at the ACLU of Southern California, I received a distressing phone call from a picketer that six Hispanic farm workers picketing in Huntington Park had been arrested for picketing on a public sidewalk that the local police said disturbed the peace and constituted criminal trespass. The picketers' one phone call to me was from jail. Now they were in need of a criminal defense attorney as they were given a court date for their arraignment. I quickly called the picket captain of the area and informed him to obtain the necessary bail to have these men released so I could speak with each of them and start to gather evidence for their defense so they could continue their picketing elsewhere. I met them and determined that this was a blatantly false arrest by misinformed insensitive police officers from that small city.

I had never tried any case before, and only recently had received my license to practice despite my 33 years on this planet of which eight and a half were with the Navy. The Vietnam War, the protests, and an awakening from the Peace Movement and friends, had convinced me to become an activist attorney after watching my high school buddy, Jerry Cohen, argue farm worker's constitutional rights. That case first inspired me to get involved in the Farmworker Movement. I visited Delano and spent significant time with Jerry leading to research on a paper I wrote on the movement while at Cal State Long Beach which furthered my interest in the UFW cause. Two summers I worked as a law student with Jerry at the UFW legal office which provided an inside view of a deeply committed civil rights attorney who was eloquent in argument, motivational in actions and demanding on competence.

My three years in turbulent Berkeley during law school prepared me somewhat for the intense conflicts between protesters and police but this arrest was a reprehensible disruption of peaceful First Amendment conduct that could seriously damage the boycott if repeated elsewhere. My fear of not being adequately prepared to try a criminal case caused me incredible anxiety immediately primarily for the innocent farm workers who were at peril of losing their liberty if found guilty. Fortunately I knew the ACLU had contacts with many experienced criminal defense lawyers and began seeking any who might be willing to help me through my first trial. One was named David Finkle and the other was Hugh Manes who had many years of criminal defense experience. They urged me to try to convince the prosecutor at the arraignment to drop the charges but this prosecutor made it clear he was determined to get a conviction.

This case suddenly became a test case for the picketing in Los Angeles, Orange and Ventura Counties. Despite my legal knowledge and determination to do everything in my power to advance the rights of farm workers in these Counties, if this case should be lost, prosecutors from all the surrounding cities would be encouraged to put farm workers and their supporters in jail and give the boycott a serious defeat that could jeopardize its future effectiveness. I became nervous and afraid that this one case put me in a perilous position as the attorney of record of not just one criminal defendant, but six and the entire Los Angeles Boycott!

Anyone can lose a case in court attorneys will tell you. There are so many factors over which you have little or no control. The judge can completely dominate such a case with any prejudice he has against outside agitators coming into a city and causing any civil strife. Then the jury must be

carefully chosen to avoid having someone sit on the panel who has an interest in advancing the cause of growers, supermarkets or the Teamsters Union in the grape strike. Finally the lawyers involved in any case can make a difference by their motions, selecting a jury, opening statement and closing argument. I was completely new at trial work while the prosecutor had many years of experience over me, was familiar with the judge and worked in the Huntington Park community against crime as a public servant. I shuddered to think how devastating a defeat would be for Cesar Chavez, the UFW, these individuals who were low paid farm workers, and for me. I could not help but daily be reminded of the awesome responsibility that rested solely on my shoulders.

I made a telephone call to David Finkle asking for his advice on how to handle selecting the jury just before trial and took copious notes during the hour-long teaching session. David ran me through a discussion of the types of jurors we didn't want on the jury including former police officers or those with family members in law enforcement because they generally can't believe a prosecutor would bring a false charge against anyone and are seriously prejudiced on behalf of the prosecution.

Then we didn't want anyone who worked for any markets carrying produce subject to the boycott like grapes, wine, lettuce, melons, artichokes, strawberries etc., nor anyone who had family members who did such work. "You don't want anyone on the jury who owns a business as they tend to side with other businesses that claim losses due to the picketing." Then we discussed the types of questions to ask to determine if any of the prospective jurors had negative feelings about boycotts, First Amendment leafleting, farm worker issues, Cesar Chavez or any other human rights movements such as the protests against the Vietnam War.

Listening and taking notes from David's years of experience was one-on-one seminar from a professional to a novice and soon from a mentor to an enthusiastic student. He emphasized jury questions, by how they are phrased, actually teach the jury all about the need to be sensitive to civil rights and the constitution in the case. "You want them to join you in asserting your clients' right to inform the public about this burning social issue and make them feel they are performing an important public service in upholding these cherished rights which are fundamental in a democracy. Make them feel like good citizens!"

Then we discussed a critical part of every criminal trial. Should I put each client on the stand to testify regarding their conduct while picketing in Huntington Park or should I have them maintain their Fifth Amendment right to remain silent and force the prosecution to prove criminal conduct beyond a reasonable doubt? David agreed with me on this that usually you don't allow your client accused of a crime to take the stand because so many persons can make mistakes when answering questions from a clever prosecutor. But in this case I was confident that each defendant had been exercising his First Amendment rights and did not commit a crime and would not harm their case.

Since each defendant spoke Spanish as his native language and English only when necessary and often poorly, I asked for an interpreter before trial in case I would choose to have them testify. I counseled each defendant on how to explain their actions did not amount to a crime because they didn't use unnecessarily loud shouting to interfere with the store's customers or threatened them in any way. They were informing the public with a message while picketing and did not disturb the peace in any criminal manner whatsoever. They did not block ingress and egress from the store and never used their flags with the black and red Aztec eagle and UFW logo to harm or threaten anyone.

On trial day I also came prepared with my jury questions, an opening statement and arguments with legal points and authorities in case the judge needed them during the trial to help him with any rulings. I met my six clients before the trial was set to review the statements they gave me for any final questions and to try to instill confidence that this prosecution must fail as it could have a devastating effect on the boycott. I reminded them that each defendant could be sentenced up to six months in jail on each misdemeanor charged if the jury believed they acted in a criminally obstructive manner or if some prosecution witness lied to the jury. I also informed them when they testify to speak clearly and look into the eyes of the judge when speaking.

They expressed excitement about their opportunity to inform the judge and jury about the farm worker plight, what the picketing was about and to defend their actions. I shared their enthusiasm but knew what an awesome responsibility I had undertaken and began to experience the fear that something could go wrong in any trial, especially a lawyer's first one. Then I saw the prosecutor as he arrived outside the courtroom with his investigators, witnesses, detectives and police officers who looked confident and cocky. I said "Good morning are you ready for this trial?"

"Yes I am. We are going to put each of your clients in jail for disrupting businesses in Huntington Park and intimidating our citizens. Why don't you just plead them guilty of a trespass misdemeanor and I will dismiss the disturbing the peace charges?"

"No thanks. I am here to prove their innocence so they can return to the stores in your community and continue exercising their constitutional rights without police interference."

Soon the bailiff opened the door to the courtroom we were standing in front of the judge and jury. The courtroom was filled with UFW supporters who were there to watch this drama unfold and be there for their friends facing criminal charges. The prosecutor and I selected a jury after about two hours of questioning and challenges to those who were not good jurors for this case from my perspective and his. Then the judge said, "The People may begin with their opening statement."

The prosecutor walked confidently up to the jury box, put his hands behind his back and strutted back and forth sticking out his chest covered with his \$500 three piece suit gesturing with his hands to each of the jurors as he argued that the picketers criminally trespassed and disturbed the peace came at the store and brandished weapons they call flags. He argued these wooden stakes were capable of serious bodily injury as any potential customer approached the store and that the picketers caused serious economic damage to the store owner. He said the defendants shouted at the top of their lungs various threats to the peace and safety of these intimidated potential customers forcing them to leave the area and make purchases they otherwise would have done, but for criminal conduct of these defendants.

He urged them to enforce the laws of trespass and disturbing the peace in this hostile and threatening atmosphere in Huntington Park to ensure such conduct is not repeated here. He referred to them as rabble rousers and bullies from outside of the city. He argued that there was no constitutional right to intimidate customers and drive them away from stores where they otherwise would spend their money.

He said they should view with great suspicion anyone who testifies that such actions are protected First Amendment activities as that will only encourage this group of outside agitators to return to

this scene and others stores in our city to disturb and intimidate our peaceful and law abiding citizens attempting to shop.

I had listened to this gross misrepresentation of the facts by a tricky and sly veteran determined to win a victory in a case that never should have been filed as if this were some athletic contest or a game. It occurred to me how desperately unfair our criminal justice system is to have such polished prosecutors willing to exaggerate wildly with all the resources of the prosecution against most defendants who can't afford competent counsel in order to gain a criminal conviction. How dare he think he can get away with this charade?

I gathered my scribbled notes I had written like a court reporter taking dictation. I underlined the portion where the prosecutor overstepped the grounds of truthful representation and demonstrated unethical advocacy. I advanced confidently to the jury box and faced each of the jurors told them the prosecutor was not present at this constitutionally protected informational picketing of the store carrying products that the United Farm Workers boycott all around America, not just in the city of Huntington Park. I informed them our witnesses would testify about the history of the development of this union committed to representing farm workers' rights all over America and in California.

The trial proceeded with the prosecutor calling the police and the store owner to try and show some criminal trespass and disturbing of the peace. I cross examined each witness establishing that no violence or damage occurred beyond lost customers and some profits. They admitted that no one taped the voices of the picketers so the prosecution only had minimal testimony on the loudness of the chanting but no witness established that any picket shouted in a manner that disturbed the peace of anyone but the store owner. After the prosecution's case I made a motion to dismiss the charges on constitutional grounds but the judge denied it saying. "Counsel I want to hear your witnesses and I know the jury does before any decision on this case is made. Call your first witness, the motion is denied."

I called the picket captain who explained his role in ensuring the space between the pickets always allowed any customers to enter the store if they wanted to. He explained the training each picket underwent to ensure no one's peace was disturbed and the background of each picket as to what field they came from and what crop they picked. He reiterated the non-violent message the Cesar Chavez instructed all pickets in training sessions and the message each picket delivered to the public regarding the boycott and its history. He was very articulate, clean cut and very impressive even though he wore simple jeans, a working blue Levi shirt and field boots. He had a UFW band on his sleeve with the sign of the black eagle and the words "Huelga" clearly in view. He gave the reasons why the farm workers devoted their time to this boycott, the benefits of the UFW and the terrible loss of life and intimidation suffered by the picketers at the hands of Teamster thugs with their weapons and violence. He also described the role the police have taken occasionally to misunderstand the rights picketers have to get their message out to the public. He explained how disruptive it was for him and his family to be arrested and subject to this trial and a possible conviction if anyone didn't understand the rights to freely communicate and boycott products carrying the Teamster label like grapes and lettuce. He appeared to anyone who saw him to be a quality hard working family man who was fully committed to la causa and absolutely no bully, gang member or rabble.

I called each of the other five picketers to testify who proceeded to tell each of their stories as the picket captain had with their own background and experiences. Each was a hard working Hispanic field laborer who threatened no one in Huntington Park. Those messages came out loud and clear from each of the picketer's testimony despite the fact that none wore fancy clothes nor were as articulate in English as was the picket captain. For three of the Hispanic pickets I employed the services of the interpreter who conveyed their Spanish testimony to the jury professionally and accurately which confirmed most of the picket captain's testimony.

The prosecutor tried in vain to impeach each farm worker in his cross examination but failed miserably unable to establish anything more than normal picketing and information provided to customers without intimidation. Nevertheless, he called the store manager and police officers whose testimony, if believed, would subject each picket to the possibility of jail time no matter how compelling the UFW defendants' testimony was. I had to hope the jury got the message we provided and that they would not accept the prosecution witnesses' exaggeration of misconduct.

Then came the final argument for the prosecution. Arrogantly the prosecutor reiterated each of his false claims made in his opening statement and repeated his request that the jury remove these agitators from their tranquil city. He stated the jury should find them guilty to teach these misguided bullies from out of town to leave this community alone and remove their flags and sticks and disturbing noise from the area. He claimed his witnesses' testimony proved beyond a reasonable doubt these defendants engaged in criminal conduct. He must have made this same argument smoothly and without hesitation to all the juries he faced sending many an innocent person to the vagaries of what twelve jurors might decide.

Then it was my turn for my first final argument in a criminal trial. I followed the jury instructions on the concept of reasonable doubt emphasizing each witness's testimony which did not prove anything but the robust and active First Amendment protected activity of a well-organized picket line. I read the words of the constitution and explained how each picketer acted in the finest traditions of our guaranteed freedoms. I carefully repeated my charge to them from the opening statement and how the witnesses supported the defense theory of the case. I asked each juror to remember their assurance they gave me when I selected them as jurors that they would follow the law as instructed by the judge and not consider any statements by the prosecutor as evidence.

Then I mentioned that the only persons to gain by finding my clients committed a crime was the store owner who simply didn't want pickets present and the prosecutor who wants to win all his cases. Then I said something David Finkle suggested I must say at the end of my final argument. I told the jurors that,

"This was my first criminal trial. If anything I said had offended you, or if I failed in persuading any of you fully, please do not let my clients be judged criminals because of any shortcoming I may have in trial experience compared to the prosecutor who tries cases every day. Thank you for your attention. Please follow the evidence and jury instructions and decide not guilty as to each defendant."

The judge then read the jury instructions both the prosecutor and I submitted to him on this case including cases I cited upholding the robust nature of First Amendment activity in the marketplace. The instructions clearly defined reasonable doubt and the prosecution's obligation to prove its case

by such a standard. Then he asked them to retire to the jury room to deliberate. He asked trial counsel to stand by for a verdict or leave a phone number where the clerk can summon us to the courtroom in no more than five minutes in case they have any questions about the instructions or the evidence. I went outside and thought to myself only a few years ago I never believed I could ever stand before a judge or jury and perform the tasks expected of trial attorneys. I thought I didn't have the ability to ever do what I had just done. I felt a strong sense of accomplishment but dreaded the wait given the arrogant and false arguments presented by the prosecution which made this whole process seem somehow like a fraudulent sport rather than the sacred nature of rights and justice that were at stake here in Huntington Park.

Anything can happen in a jury trial I had been reminded by cynical but realistic lawyers I knew. This prosecutor actually used all the resources of the state to try to put good law abiding people into jail and disrupt their lives with misrepresentations and falsehoods. How could anyone trespass on a public sidewalk? This prosecution was simply outrageous. That we had to defend such well-respected conduct in court should never have been required. Then the judge had the bailiff locate me and come to the courtroom as the jury had reached a verdict after four hours of deliberation. I looked at the faces of the jurors but they were looking at the judge. I had an instant fear of the worst nightmare happening.

Then the judge said, "Mr. Jury foreman have you reached a verdict?"

"Yes, your Honor we have."

"Please read the verdict."

"We the jurors in People versus Hernandez et al, have reached a verdict of not guilty on all counts."

Cheers rang out immediately from the UFW supporters that had filled the courtroom as my clients stood and cheered with jubilation at the beautiful sound of the verdict. "Order in the court room," yelled the judge as he beat his gavel on the desk three times rapidly restoring silence. "Each defendant rise and face this court," said the judge sternly. "The charges are dismissed as to each of you. You are free and your bond is exonerated. Good day."

A few minutes later I met with the farm workers who I just represented and invited them to my home for a barbeque and celebration of our great court victory. They agreed to come and asked what could they bring? I responded, "Just come to my house and I will provide all the food and drinks for anyone interested in sharing the celebration with us. Here is my address and directions. We will have the party at 3 pm. See you then."

I went home and told Joan of the tremendous victory we had in court despite a determined experienced prosecutor and that we needed to go shop for a celebration party soon at our small rental home in Sherman Oaks. Joan was delighted with the good news. I bought a load of chicken, soft drinks, fruit, potato chips and beer and started up a fire in my Weber outdoor grill in my driveway. Soon the farm workers and some supporters showed up to join Joan, baby Aleksey and me for a celebration.

I got caught up in the celebration and discussions about the case when someone noticed the barbeque was on fire! I ran and turned the hose on the blazing flames; then raised the lid of the Weber to find about thirty pieces of chicken blackened from overcooking! I screamed, “Oh shit, there goes the BBQ!” I was embarrassed since barbeques have always been a specialty with me but the distractions finally caught up with my verbal disease of discussing everything in the legal world while the real world went on at its normal pace.

Two of the farm workers said, “Don’t worry Dan; the chicken is the way we always like to eat it. All you need to do is take the skin off like this,” as they carefully removed the burned crust on the outside. Then the chicken looked great and we all had a good laugh at my “catastrophising” over nothing. It was a festive celebration and made me so glad to have been a small part of a much needed victory after such a challenge to the very rights of picketing that sustained the Movement.

Soon thereafter a very special guest arrived to join us. Cesar Chavez was in town, heard of our victory and was there before my eyes to celebrate a few weeks later with us at my home! He congratulated me on a good job defending the false charges, hugged Joan and me and my young son Aleksey. He motivated me to keep pressing on the path for social justice I had chosen as there was much to be done and too many acts of violence against picketers all over the state. He had to leave us to make an appearance at a benefit for the UFW and a speech so we thanked him for joining us and watched him adoringly as he left our party back to his endless schedule. His visit was the kind of touch Cesar provided that let us all know our work was appreciated by our incredibly inspirational leader and that we had been aroused and stimulated again to keep the movement going with all our energy.

Not long after this experience I had the honor of filing a huge case against the International Brotherhood of Teamsters and their goons after many days of factual and legal research. Overcoming the aggressive voluminous motions to dismiss in federal court required hundreds of pages of points and authorities and documentation. Then Dolores Huerta visited me at the ACLU in one surprising inspirational meeting in which she complimented my drafting of the language in that complaint as one of the most passionate accounts of the repeated horrendous violations of civil rights and plea for social justice she had read. I was stunned by her remark and humbled by her acknowledgement of the hours of enthusiasm that were spent putting that legal challenge together. She put so much energy into me from that short visit that I often have reflected on what brilliant motivators Jerry, Dolores and Cesar were and how fortunate we were to have had such individuals leading the movement. They never acted like “stars” which set them apart from the egotistic leaders that characterize many law firms, and those we battled against.

The continuing prosecution and victory of that case by my successors (Jim Rutkowski, Henry Giler, Mike McCrory) in the legal department is carefully set forth in Jeff Sweetland’s 1975-78 account on the Farmworker Movement Documentation Project website and is a moving tribute to all of us who participated in putting it to the Teamsters and their goons after their outrageous abuse of farm workers in the fields. The main remedy from that case was an agreement by the Teamsters that they would not organize farm workers for at least five years – which was later extended to ten years and a modest monetary sum. This was a fitting end of this chapter of violence towards farm workers and their supporters. Si se puede!