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Vindicating the Rights of Undocumented Farmworkers: Rancho de Cuevas

Lydia Villarreal, Juan Uranga and William Kennedy*

I. INTRODUCTION

The colossal wealth of California’s agricultural industry has been built largely upon the backs of Mexican laborers. Their immigration across our southern border has been self-regulated by industry’s demand for a cheap, docile labor force. Indeed, our nation’s immigration laws reflect a policy of accommodation to industry’s interest or disinterest in labor.¹

The work force that tends California’s farms and fields includes a large percentage of undocumented workers who toil for countless hours in excruciating conditions for minimum wage and less. For many growers, the undocumented laborers make up the work force of preference. Their immigration status renders the workers vulnerable to the grossest work place abuses, including denial of wage and hour protections, minimum housing standards, and more basic human rights such as water and lavatory facilities.

Most undocumented workers perceive that complaints regarding law violations or inhuman conditions will result in exposure to the government and deportation. The government’s immigration enforcement activities conducted by the Immigration & Naturalization Service (INS),

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¹. For a historical perspective on U.S. immigration policy as it relates to labor, see JAMES D. DOCKCROFT, OUTLAWS IN THE PROMISED LAND (1986).
in partnership with other government agencies, forces an isolation which
renders the undocumented workforce ripe for exploitation. As this article will reveal, that exploitation can take monstrous proportions.

II.
THE PLIGHT OF UNDOCUMENTED WORKERS

The political scene upon which this story unfolds has shifted dramatically in recent years. There is a common perception that the historic battles for farmworkers' rights in the 1970's improved labor and housing conditions such that these problems have largely disappeared. Nothing is further from the truth. Today, we can still find farmworkers laboring in pesticide-laden fields for less than minimum wage and living in inadequate housing. Moreover, today's abuses occur in an environment lacking the farmworker activism which fueled the farmworker movement and rallied urban and rural people to fight for farmworker justice. Without that movement, today's victimized farmworkers are far more vulnerable than those who toiled during the 1970's.

This article will examine an incident of a horrendous abuse and will discuss how to focus community legal resources to defend undocumented farmworkers' rights and dignity.

III.
CASE HISTORY: RANCHO DE CUEVAS

A. Factual Background

We focus on the agricultural operation of one grower, Jose Ballin. During the period of 1981 to 1987, Jose Ballin, an immigrant from Mexico, presided over a million dollar strawberry ranch in the Salinas Valley. He farmed approximately 225 acres in Monterey County's verdant hillsides. He employed nearly 100 farmworkers a year. All of his employees were undocumented.

Jose Ballin's workers migrated to California from as far away as Oaxaca, Mexico and Guatemala. They came in search of work their homelands were unable to offer. Their wages supported their extended families back home. To evade apprehension by immigration authorities, the workers lead an underground life-style doing as little as possible to call attention to themselves. For some this meant that they never left the
farmworker's rights
ranch for shopping, entertainment or health care needs. For those who
did venture beyond the borders of the ranch, the trips were short, direct
and designed to avoid the public. Deportation does not deter workers
from returning to the United States. Deportation does, however, impose
a substantial cost to the workers as it interrupts the flow of funds to their
families back home and creates the additional expense of hiring a “co-
yote” or border smuggler for the return trip to the United States. The
cost, through lost wages and “coyote’s” costs, meant that the families
back home would live with less.

The distinguishing characteristic of Jose Ballin’s ranch was its hous-
ing accommodations. When workers arrived, they were required to find
accommodations on the ranch. The grower provided mattresses which
the workers arranged in the back of abandoned pick-up trucks, in storage
sheds, and even in tractor scoops. Others made their homes in a tree-
house, an outhouse turned on its side, or in small shelters made from
wooden pallets. The most shocking accommodations were the “homes”
made in dirt caves dug into the hillside. The grower provided the tools to
dig the caves and told some that they would be safe from the INS in the
caves. These shocking conditions led the workers to call the ranch
“Rancho de Cuevas” or Ranch of the Caves.

The workers lived in these accommodations without heat, water,
bathroom, or bathing facilities. Ballin directed the workers to use a
nearby hillside as a “toilet” and periodically directed them to clean the
hillside. The Cuevas workers cooked their meals over open fires on the
ranch. Ballin provided no potable water for drinking or cooking. The
workers would bathe in water from a small reservoir filled with irrigation
water and runoff from the fields. The workers used empty pesticide con-
tainers to carry water.

For their labor irrigating, weeding, thinning, and harvesting
strawberries, the workers were paid $3.00 per hour; a wage far below the
state mandated minimum wage. They were paid weekly in cash but were
seldom paid for all of the hours they worked. The grower would some-
times take unexplained deductions of up to $100.00 a week from the
worker’s pay. Ballin explained to some of the workers that these deduc-
tions were made to compensate him for providing a free “place to sleep,
eat, and park the workers’ cars.” Finally, Ballin deducted taxes from the
workers’ wages to pay for benefits they would never receive because of
their immigration status.

The Cuevas workers faced a formidable task if they were to end
their exploitation. They needed to overcome a fear of retaliation and
deportation; to awaken the sleeping governmental agencies charged with
providing them protection; to forge an alliance with a traditionally hos-
tile community by humanizing their dilemma; to neutralize their
“hunter,” the INS, which was perceived to work hand in hand with the growers; and finally, they had to trust that they, with others, could win this fight for dignity and expose this cruel and inhumane underbelly of California's billion dollar agricultural industry. The enormity of this task was only matched by the enormity of the courage of the Cuevas workers as they set about their work.

B. The Role of Publicity

It is human nature to feel pained when other humans suffer. This is especially true when the suffering takes place amidst plenty. Though it is often easy to look the other way, basic human decency generally compels action when action is clearly called for. Understanding this, the Cuevas workers held a press conference on September 22, 1985 to announce the filing of a law suit and to focus attention on the oppressive conditions that they suffered. In doing so, they took the risk that exposure would lead to deportation and that they would fail to mobilize community support.

The morning press conference began with a tour of the ranch itself. Television and news cameras recorded the conditions as the workers, their attorneys, and the bishop of the Monterey Catholic Diocese spoke to reporters. Thereafter, a question and answer period exposed the extent of the outrage that was “Rancho de Cuevas”. Bishop Shubsda brought the moral authority of the Catholic Church as witness to the workers’ suffering and demanded a compassionate response from the community. The commitment of the Diocese was confirmed shortly thereafter when it posted bail for two workers picked up by the INS. The risk paid off as the community and state were shocked into action, taking up the workers’ cause as its own moral struggle.

The Monterey County Board of Supervisors directed its staff to help find alternative housing and to find funds to pay for the housing. Local physicians set up a free medical clinic to give the workers extensive physical examinations. These examinations exposed the nature and extent of their physical suffering. The County Health Department investigated and cited Ballin for more than 40 violations of the California Health and Safety Code. The District Attorney’s office pressed criminal charges on these violations. Ballin was convicted and sentenced to six months in jail, three years probation, and fined $10,000.

Local politicians and the editorial staffs of local newspapers urged the INS to allow the workers to stay in this country, pending the trial. They argued that any other result would encourage this type of exploitation. To our astonishment, the INS agreed to cooperate and allow the workers to pursue their legal claims.

Over and over again, the community refrain was heard: “No one,
undocumented or not, should have to live like that.” Within two weeks of the filing of the lawsuit and its attendant publicity, 40 more farmworkers came forward to join the lawsuit and the fight for dignity. The publicity had created a climate of compassion from which the legal battle could go forward.

C. The Role of Legal Advocacy

1. Traditional Legal Remedies

California law mandates a number of wage and hour protections for all employees. These include the right to receive minimum wage, itemized wage statements and the posting of wage orders which explain rights. Enforcement of these rights is generally accomplished by filing a complaint with the Labor Commissioner of the State Division of Labor Standards Enforcement. An adversary administrative hearing is then held to adjudicate the complaint. The process can take several months to resolve. Most farmworkers find the process too ponderous and threatening to use.

The State and County mandate minimum standards for health and housing. These standards are generally enforced by County housing and health officials. The process is generally one of citation and follow-up compliance inspections. In rare cases, these complaints result in civil fines or criminal sanctions. Unfortunately, the penalties for violating these rights are slight and the likelihood of prosecution even less.

More importantly, there is no substantial economic incentive to comply with these protective acts. The unlikely chance of enforcement activity is combined with the less likely chance of a complaint ever being filed. An unscrupulous grower can therefore violate these laws with impunity.

2. Alternative Remedies for Labor Violations: Tort in Essence

The spectre of exposure to tort damages has been the impetus for reform in many industries. It raises the dual impact of general and punitive damages for the individual and increases insurance rates for the industry. The former creates a personal threat to the pocketbook and the latter often leads to a campaign of education and reform. Plaintiffs searched for a remedy in tort which might fit the facts of their case. One possible remedy is a “tort in essence”.

While a tort is generally defined as the breach of a duty owed to another, a tort can also be defined as a breach of a duty established by

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statute. Simply put, one establishes a tort in essence in the noncompliance with a statute which causes injury.

Historically, courts have given different rationales which result in differing standards for establishing a tort in essence. In *Elsis v. Evans*, the court stated that "an intention must be assumed that the rights conferred [by statute] shall be enforceable by legal proceedings." The *Elsis* court concluded that when an affirmative and definite declaration of public policy is contained in a legislative enactment, the "courts of equity are invested with power to design their decrees so as to enforce rights and compel performance of the duty prescribed therein. Where the right is present, the remedy exists."

In *Middlesex Ins. Co. v. Mann*, the court considered the circumstances under which a statute will provide a basis for a civil action. The court set forth the following standard for a "tort in essence" action quoting Restatement Second of Torts, Section 874A:

> When a legislative provision protects a class of persons by proscribing or requiring certain conduct but does not provide a civil remedy for the violation, the court may, if it determines that the remedy is appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision, accord to an injured member of the class a right of action, using a suitable existing tort action or a new cause of action analogous to an existing tort action.

In *Montalvo v. Zamora*, the court quoted the preamble of California Labor Code Section 923, which states the public policy supporting an employee's right to free association, self-organization, and designation of representatives. The court concluded that a violation of a statute embodying a public policy is generally actionable even though no civil action is provided, and even though criminal sanctions are provided.

Most California labor codes do not have the clear statements of public policy contained in Labor Code Section 923. Therefore, how does one determine an "affirmative and definitive declaration of public policy?" Plaintiffs argued that the statutes themselves embody the requisite declaration of public policy of the need to inform workers of their employment rights, their wages and deductions, and where to go if their rights are violated. *Montalvo* supports this argument by establishing a tort in es-

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8. Id. at 409.
10. Id. at 570.
sence remedy where an employer discharges a worker in retaliation for exercising rights which minimum wage laws guarantee.

_Montalvo_ established a tort in essence because the discharge scrutinized there violated public policy respecting minimum wage. Minimum wage laws for women and minors establish as public policy of this state the health and welfare of women and children. As such, violations of this statute are justiciable in civil actions. This act has since been amended to also protect men.\(^2\) Plaintiffs seek to extend the tort liability allowed in _Montalvo_ to the nonpayment of wages. In _Glenn v. Clearman's Golden Cock Inn_,\(^3\) the court provided support for this position. The court defined “public policy” as “[w]hatever contravenes good morals or any established interests of society. . . .”\(^4\) In _Hudson v. Craft_,\(^5\) the court pointed to the long history of legislative regulation of boxing as a declaration of public policy against uncontrolled boxing matches.

After establishing a public policy, the second requirement for a tort in essence is that the statute require certain conduct. The minimum wage law certainly fulfills this requirement; it requires that every employer pay at least the minimum wage.\(^6\)

Thirdly, the court must decide whether such a civil remedy is “appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision.” If one looks at the current state of conditions in California, as exemplified in “Rancho de Cuevas,” one can see that such a private right of action is needed.

A number of cases have pointed to the need to maintain the requisite elements of a common law tort for a tort in essence action. In _Swickheimer v. King_,\(^7\) the court refused to allow a civil cause of action based on a statute which imposed strict liability without regard to a finding of negligence or even knowledge of wrong-doing. In other words, once a court allows tort in essence as a viable cause of action, the plaintiff must proceed to establish the normal incidents to a tort action, e.g., injury to a person proximately caused by the breach of a duty owed to him.

Once a tort is established, California Civil Code Section 3294 allows exemplary damages. Section 3294 provides in relevant part:

1. In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may

\(^{12}\) CAL. LAB. CODE § 1197.5 (Deering 1976).
\(^{13}\) 192 Cal. App. 2d 793, 13 Cal. Rptr. 769 (1961).
\(^{14}\) Id. at 796.
\(^{15}\) 33 Cal. 2d 654, 660, 204 P.2d 1 (1949).
\(^{16}\) CAL. LAB. CODE § 1197 (Deering 1976).
recover damages for the sake of example and by way of punishing the defendant. (C.C. Sec. 3294)

Those who opposed tort in essence theories argue that because the labor code sections provide a criminal penalty, a civil action for damages is neither contemplated nor authorized. However, this argument was rejected in Glenn.\textsuperscript{18} The Glenn court declared that Labor Code Section 9234 enunciates a public policy of this state that the beneficiaries of that public policy can pursue damages as well as injunctive relief for violations of their rights, criminal penalties notwithstanding.

A tort in essence cause of action has several advantages. It allows more than actual damages because it sounds in equity. It also allows consequential damages. Additionally, if one can prove malice, one can also recover punitive damages.\textsuperscript{19} Punitive damages allow a jury to individually consider society’s standard of conduct, the acts of the employer, his economic status, and then designate an appropriate penalty.

3. \textit{Alternative Remedies for Housing Violations: Nuisance}

Though the Cuevas lawsuit dealt primarily with labor law violations, the housing conditions drew the most public condemnation. It was essential to devise a remedy for the appalling housing provided at the ranch. Problems arose immediately when we focused upon the conditions at the ranch with purely landlord tenant theories. Are caves and tractor scoops housing? Could we argue habitability when the structures were not fit to be occupied by human beings? These problems were sidestepped when we decided to pursue the claims with a nuisance cause of action. An action sounding in nuisance had the advantage of providing consequential damages and if malice was shown, punitive damages. Finally, a nuisance cause of action is easy to prove.

A nuisance cause of action is an equitable remedy based upon an unreasonable interference with a property right.\textsuperscript{20} The general definition of nuisance is found at California Civil Code Sections 3479-3481. Civil Code section 3479 states: “Anything which is injurious to health, or is indecent or offensive to senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, . . . is a nuisance.” A nuisance may be a public nuisance which affects the community in general or a private nuisance which affects personal rights.\textsuperscript{21}

If the nuisance is a private nuisance or a public nuisance in which the plaintiff suffers special damages, the remedies include injunctive relief

\textsuperscript{18} Glenn, 192 Cal. App. 2d at 798.
as well as damages for discomfort, annoyance, and emotional distress.\textsuperscript{22}

The legislature has chosen to offer specific definitions of activities or conditions which constitute "nuisance per se."\textsuperscript{23} When these conditions exist, there is no need to prove that the activity is indecent, offensive, or an obstruction of the free use of property.

The Uniform Housing Code, Section 202, declares that "[a]ny structure used as a dwelling which has become substandard is a nuisance." A dwelling is substandard when there exists in that dwelling, or in any portion of it, violations of the Uniform Housing Codes which endanger life, limb, health, property, safety, or welfare of the public or the occupants. The Uniform Housing Code then lists dozens of conditions which are considered to be the minimum standards of housing in our society (See UHC Section 1001). Similar definitions of nuisance are found in Health & Safety Code Sections 17920.3, 17920.7, and Title 25 of the California Administrative Code, Section 54.

Although the conditions at "Rancho de Cuevas" could meet the nuisance per se definition, plaintiffs had to address the more basic questions of whether the primitive accommodations supplied by the grower amounted to housing, and whether the plaintiff had a property right that was being violated. Plaintiffs argued that the primitive accommodations were housing by relying on the language of the Uniform Housing Code. There the legislature provided that the code applied to any structure "used as a dwelling" and not only to structures intended for use as a dwelling. Defendant argued that caves, sheds, and abandoned vehicles were not housing and should not be judged by housing code standards. The legislative language made clear that "intent" was not required. The defendant, however, would be hard pressed to deny his knowledge, encouragement, acquiescence, and acceptance of the benefit of the make-shift housing on the ranch.

Plaintiffs addressed the second question by reference to a series of cases which held that a leasehold interest was a sufficient property right to serve as the nexus of a nuisance cause of action.\textsuperscript{24}

The leasehold claim was supported by the wage deduction made for housing. More importantly, the defendant was collaterally estopped

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from denying that a lease existed because he was criminally convicted of operating a labor camp at the ranch. The labor camp verdict necessarily included a finding that a landlord and tenant relationship existed.

The main advantage of the nuisance cause of action is the ease of proof. Nuisance requires only that a public health or building official determine that the structures used as buildings violate the Uniform Housing Code and that they endanger the health or safety of the occupants. In addition, the plaintiffs must show that the nuisance was especially injurious to them as opposed to the community in general. Since the damages could be substantial, nuisance damages create a new economic disincentive to this kind of treatment of farmworkers. The discomfort the farmworkers suffered at “Rancho de Cuevas” was sufficient to meet this test.25

4. Additional Remedies: Emotional Distress

The human suffering at “Rancho de Cuevas” went beyond the scope of traditional labor and housing actions. Therefore, a cause of action for intentional infliction of emotional distress was included in the complaint. This action allows recovery for severe emotional distress, if the defendant’s conduct is outrageous and beyond all bounds of decency.26 Plaintiffs’ attorneys felt that the facts fit the elements of this tort and would allow recovery for the outrage that was “Rancho de Cuevas”.

The workers living at the ranch suffered great humiliation and anger. They had traveled thousands of miles in search of work, understanding that they would be living in poor conditions. The stories they had heard about work in “El Norte,” however, never prepared them for the level of abuse they received. They felt trapped, hunted, and helpless to complain. Their vulnerability was exploited by the grower, upon whom they depended for their livelihood. Ballin understood this vulnerability and preyed upon the workers’ psyches by calling them “animals” and continually pointing out their dependence upon him for work, food, and shelter. He would fire workers who looked for work elsewhere. He would punish them by adjusting their work hours. He would ridicule them if they complained or asked for better conditions. He would threaten them with the INS if they offended him.

Several of the Cuevas workers were seen by Dr. Armando Morales, Director of the UCLA Neuropsychiatric Institute. He found the workers’ psychological profiles to be remarkable. His examinations answered


the difficult question which any trier of fact would ask: "Why didn't the workers leave?"

Dr. Morales explained that through overt and subtle manipulation of psychological, cultural, physical, and social stress, the grower was able to create a "captive workforce." The workers suffered from "adjustment disorders" very similar to those suffered by prisoners of war or victims of organized religious or racial persecution. The workers, Dr. Morales explained, felt hopeless to improve their lot and, while isolated, had been effectively robbed of their will to fight back.

A cause of action for the intentional infliction of emotional distress would allow a trier of fact to consider the peculiar susceptibility of the workers in awarding damages. Conduct may be considered extreme and outrageous when a defendant proceeds to exploit a relationship using employee, tenant, racial, or cultural factors.27 However, the Workers' Compensation Laws posed a potential problem.

D. Obstacles to Pursuing Tort Remedies: Workers' Compensation

The biggest legal obstacle to the successful prosecution of tort actions against employers is a jurisdictional argument that the exclusive remedy for any claim arising in the workplace is covered by the Workers' Compensation Laws. It is beyond the scope of this article to fully analyze this area of the law. The authors, however, wish to point out that workers' compensation has an important impact on actions such as those proposed in this article.

The workers' compensation law is meant to expedite the payment of medical claims of employees, regardless of employer liability. Under this system, the employee relinquishes the right to recover in tort. In other words, the employee gives up a potentially greater reward for damages. In return, the employer assumes liability without regard to fault. Significantly, the workers' compensation system limits compensation to disabling injuries. It has been liberally construed to cover all aspects of employment, including employer-provided housing. Thus, employers argue that actions for infliction of emotional distress as well as nuisance should not be allowed because they are precluded by workers' compensation.

While this is a problem that is common to all employees, not just undocumented workers, it is particularly important for vulnerable farmworkers because of their history of abuse. The courts have been grappling with this issue. It is the opinion of the authors that the courts must interpret workers' compensation laws to allow causes of action for

mental suffering (where there is no physical disability) caused by the extreme and outrageous misconduct by an employer.\textsuperscript{28}

As long as workers' compensation is an issue, employer representatives fighting such tort claims will point out that going to trial is a gamble, not only in the usual sense of winning or losing, and could result in a jurisdictional victory for the employer. This factor must be taken into account when viewing the settlement value of a case.

\textit{E. Results of The Rancho de Cuevas Litigation}

The Cuevas class action lawsuit settled on the eve of trial, April 22, 1987, for $200,000. This sum was divided equally among 45 former Ballin employees. This was widely considered an excellent settlement because Ballin had filed for bankruptcy. As a secondary benefit, the Cuevas workers, through the course of trial preparation, obtained copies of their employment records. With their employment records in hand, many were able to apply for legalization under the new immigration law and were able to prove that they worked the requisite 90 days in agriculture. Many of the Cuevas workers can now work without the fear of deportation.

\textbf{IV. THE LESSON OF RANCHO DE CUEVAS}

If there is a lesson to be learned from the Cuevas litigation, it is that client problems cannot be addressed with purely legal strategies. Full representation demands more. To ignore the social, cultural, political, and legislative implications or our legal actions would amount to a misrepresentation of the most callous kind.

The filing of a lawsuit, no matter how cleverly drafted or aesthetically pleasing, could not overcome the social and political isolation of the Cuevas workers. A lawsuit would make their grievance public and draw the ire of their employer. A lawsuit would likely result in the loss of their jobs, homes (inadequate as they were), and lead to deportation. Counsel must first address the political and social consequences of filing a lawsuit to avoid misrepresenting the client's best interest. Those who have represented farmworkers for years have witnessed the reluctance of farmworkers to use the remedial statutes designed to protect them. This reluctance is based upon the very practical consideration that retaliation by termination or deportation would interrupt their meager earnings and have a devastating effect upon their families.

The economic impoverishment is a strong disincentive to action. The livelihood of the farmworker is controlled to a great extent by powerful economic and political forces which the farmworker alone cannot hope to match. A victory in the comparatively level playing field of the court can have devastating consequences in the life of the worker for years to come if they suffer the indignity of the "blackball" or repeated deportation. Those who urge lawyers to stick to legal work and leave counseling of the legislative social impacts of their action to others are extremely shortsighted.

Adequate representation of any oppressed group necessarily compels consideration of the legal, legislative, social, and political impact of action and development of appropriate strategies for each. The Cuevas case is an example of such a strategy that was remarkably successful.

The development of legal strategies was the first step. For the most part, theories were traditional though their application was not. This article detailed the consideration that went into each.

Since exposure to a hostile government and community was unavoidable, the decision was made to seek the greatest visibility with the hope that the outrageous and inhumane conditions would shape the debate and create a sympathetic community response. The workers committed themselves to exposing the most intimate details of their lives at the ranch to public scrutiny.

The social and political isolation of the workers was bridged with this strategy due largely to the commitment made by the Catholic Diocese of Monterey and Bishop Shubsda who redefined this employer and employee conflict in fundamentally moral terms. This commitment and the workers' integrity created the context for a compassionate response from the community. As discussed earlier, this response was overwhelming.

V.
EPILOGUE

The legislative strategy was designed to reach beyond the lives of the Cuevas workers. Legislative advocate Marc Brown toured the Capitol with photographs and declarations demanding that remedial legislation be pursued. Four hundred thousand dollars in funds for farmworker housing were saved from veto as a direct result of this litigation. The risk taken by the clients paid off because they trusted and believed in themselves and their advocates. The trust was based upon an accurate assessment of the workers' plight from a multidimensional standpoint. Without these broad strategies and sensitivities, advocates will not be able to reach the grossest injustices in our society. Without courage and trust, the fight cannot go on.