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## Field Work

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## Field Work

A lawyer recollects his experiences in the 1960s defending farmworkers in the Sacramento River Valley.

**By Myron Moskovitz**

Guilty, Your Honor. We, the jury, find defendant, Shirlee Ann Decker, guilty of welfare fraud."

Well, there it was: my client convicted—the low point in my budding legal career. And it could cost me my law office.

A confluence of several factors had led to this disaster: me, Mother Nature, and "Q."

First, there was me. A few years after I graduated from law school at UC Berkeley's Boalt Hall in 1964, I was swept up by the civil rights and antipoverty movement. So I moved to Washington, D.C., to work for the general counsel in the Office of Economic Opportunity (OEO), the agency responsible for implementing President Lyndon Johnson's War on Poverty programs. My job was to help agency officials follow the law when they issued grants to local groups that were fighting poverty with Head Start, job training, and other programs—including legal services.

I hadn't been there long when one day Denny Powell walked into my office. He was an attorney for California Rural Legal Assistance (CRLA). The OEO had given several million dollars to CRLA to set up offices in California farming communities to provide free legal services to the rural poor. The Stanislaus County Bar Association had sued CRLA for "unfair competition" to stop it from opening an office in Modesto, and my boss assigned me to help CRLA beat the lawsuit.

After Denny and I discussed the suit, he changed the subject. "We'd like to expand northward, opening an office in the Sacramento Valley. You up for it?" Indeed I was.

So I left the OEO and moved back to California to become the first directing attorney of CRLA's Marysville office. CRLA had hired another lawyer, John F. Moulds III, to work with me, and I hired two secretaries, a receptionist, and two community workers. In March 1967 we opened the doors of a converted old house to clients in Yuba County (county seat: Marysville) and Sutter County (county seat: Yuba City).

John and I were in our mid-20s with no experience running anything—and neither of us had ever appeared in court. But John had done some work in politics, so he was able to advise me on how to make allies and dodge enemies—skills I would really need, as it turned out. Clerking for Justice Raymond E. Peters of the California Supreme Court had prepared me to analyze just about any legal issue, no matter how arcane, but I was no politician.

About the same time, the United Farm Workers of America also decided to extend its influence into the northern valley. Cesar Chavez sent his cousin Manuel Chavez to organize the orchard workers in Yuba and Sutter counties, and an election to determine whether the union would represent them was scheduled for the summer. Manuel had a few months to talk to the workers about what the union could do for them. It would help, of course, if Manuel could prove himself by doing something for them *now*, somehow. You know, find a need and fill it.

Conveniently, Mother Nature provided the need. The weather in early 1967 was wet and awful. Usually, farmworkers got work in late winter pruning the surplus branches off the peach, pear, and plum trees, and more work in the spring thinning out the buds so they would bear larger fruit. But the heavy, constant rains meant no work. Of course, no work meant no income, and the orchard workers' earnings from the prior fall's harvest were running out. How were they going to feed their families? Because farmworkers were not eligible for unemployment benefits, the only real possibility was welfare: Aid to Families with Dependent Children, or AFDC, as it was called back then. So Manuel brought his constituency to the attention of the Sutter County Welfare Department.

Sutter County was one of the most conservative counties in the state. It did not like giving money to people who did not work. So when the job of director of the welfare department opened up, the board of supervisors hired Mary Quitoriano—the formidable "Q"—who reportedly had promised to cut the welfare rolls by a third. Q was a small, intense woman in her 40s, with brown hair, glasses, and a tight mouth.

Manuel took the farmworkers to the welfare department, but Q's minions turned down their requests for benefits. Then

Manuel brought these clients to me, expecting us to protect their rights.

But what *were* their rights, and how could a lawyer protect them? There had been no course in "welfare law" at Boalt. I'd taken administrative law from America's top authority on the topic (Kenneth Culp Davis), and I took tax law from the great Adrian Kragen (with all its computations, welfare law somewhat resembles tax law). These helped, but there was no treatise summing up welfare law, and when I thumbed through the state Welfare and Institutions (W&I) Code as well as mountains of federal and state regulations, I found almost no annotations (up till then, welfare recipients had no lawyers).

Fortunately, my associate John had grown up in the state capital and was wise to Sacramento's ways. Ronald Reagan was governor at the time, and we expected nothing but hostility from his administration against our leftist program. But John found two lawyers with the state welfare department who were willing to give us some guidance—under the table. We met with them and received a sound lesson on the substance and procedure of welfare law. After that, we would call one of them for advice almost daily. He did nothing illegal or unethical, but his help to us could have cost him his job if it got out.

And so, with that bit of knowledge under our belts we began filing administrative appeals—called petitions for "fair hearings." The state would send a hearing officer from Sacramento up to Yuba City. In a small office at the county welfare department, John or I (sometimes both, in the beginning) would face off against the caseworker and Q, and then the hearing officer would return to Sacramento to write a decision.

After a month or so, we started to get some decisions. And we won every case.

It wasn't that hard. About 85 percent of the county's AFDC money came from the feds and the state, so those regulations controlled the rulings. Q ignored or bent the regs, and she had gotten away with it until we called her on it. Our clients were broke, jobless, and eligible for AFDC to help them feed their kids until the rains let up and they could work again. It was pretty much that simple.

Then things heated up. Manuel organized a one-day picket line around Q's office, with signs telling the public how "unfair" she was. And I filed a class action seeking to compel Q to advise all AFDC applicants of the correct eligibility requirements.

The "welfare war" became big news in the Sacramento Valley. Local newspapers covered it every day, and a Sacramento TV station did a news series on it. Q was not a happy lady.

All the focus on welfare meant that John and I couldn't do much else. Manuel kept bringing us more farmworkers who had been turned down for benefits, and the publicity helped bring us even more poor people who'd been treated illegally by the welfare department. We had to turn away clients who had consumer, landlord-tenant, or other problems. But it was worth it. If we could get the welfare department to mend its ways, we could indirectly help thousands of poor people—many more than we could assist individually. Also, we could show both the poor community and the "establishment" community that powerful institutions were neither above the law nor invincible—they could be held accountable. Maybe we could set an example that would get local health departments, schools, growers, and merchants to change the way they treated poor people—without litigation. And maybe we could inspire poor people to organize and demand better treatment.

If we pulled this off, our little two-lawyer office would have a real impact.

At the hearing on the county's motion to dismiss my class action, the courtroom was packed with people wearing large buttons that read "SUTTER COUNTY TAXPAYERS ASSOCIATION SUPPORTS Q." The judge heard my argument, asked no questions, banged his gavel, quickly proclaimed "Case dismissed!"—and ran off the bench. Up for reelection, he had punted on the issue.

Nevertheless, our administrative victories were hitting Q pretty hard. She demanded that the county hire a lawyer for her. After that, she was joined at hearings by a private attorney who did his best, but he was stuck with the law and the facts, so we kept winning. When the dust settled, we'd won more than 30 cases and lost none.

That's when Q struck back.

The blow came from the Sutter County district attorney. "Today, we are charging Juan Ruiz, Antonio Serrano, and

Shirlee Ann Decker with welfare fraud." Thus spake Dave Teja, the DA. All three defendants were my clients. We had won administrative appeals for each of them. Now, all three faced criminal charges. If any were convicted, a clear message would go out to the poor of Yuba-Sutter: "Use CRLA, go to jail!" That could be the end of my CRLA office. It seemed clear to me that this is exactly what Q intended, that she had pushed Dave to file the charges.

So I had to win these criminal cases, too. Not just to save my office, but also because I had put my clients in this pickle by representing them aggressively. In addition, Q wanted to teach the poor her own lesson: "Fight back? You might win a battle or two, but we'll win the war. We'll crush you, just like we did CRLA." I couldn't let that happen.

I knew some criminal law, of course, mainly from my clerkship. But I'd never taken a case to trial. In July, I called the head of CRLA's office in McFarland. "Help, I'm in over my head!" The next day he sent Paul Driscoll, a staff lawyer who had previously worked as a public defender in D.C., trying more than a hundred cases.

"Tell me about *People v. Ruiz*," he said.

I told him. "Juan is a farmworker, about 30, with a wife and two kids. Sweet fellow. I sometimes hang out with farmworkers at the labor camp, and I saw that Juan is very popular with the other guys. In fact, I put him on my advisory board. Maybe that's why Q went after him. When he applied for AFDC, the caseworker asked him how much money he had. Juan said zero. But the caseworker says that after Juan started receiving welfare, Juan let it slip out that he had earned \$200 the week before he applied."

Paul said, "I want to meet him."

Juan came to my office with his wife, Esperanza. Short and dark, the ever-smiling Juan shook hands with the tall, blond, grim-faced Paul. Paul asked him a few questions, and Juan told him the same thing he'd told me: "I had no money."

Paul said, "I'd like to speak to Mrs. Ruiz, alone."

What the hell? But Juan and I left the office.

About half an hour later, they came out. Juan and Esperanza left, and Paul called me back into my office and closed the door.

"He had the money."

I was stunned. My client, my friend, had lied to me. I was too naive to catch on, and too inexperienced to check it out as Paul had done.

"Paul, what do I do *now*? I have no case!"

"You don't need a case. *They* do. The prosecution has the burden of proof. Let's see if we can poke some holes in *their* case. Who's their key witness?"

"Harry Stubbs, Juan's caseworker."

"Let's talk to him."

"We can't, Paul. We can't depose him—this is a criminal case. And Q and the DA won't let us just talk to him."

"He's not a party, and they don't own him. Ask him out for a beer. See what happens."

I called Harry, turned on the charm—and he accepted!

Paul and I met Harry at a bar down the street from my office. Harry was in his 50s, short, stout, balding, and seemingly scared—though less of us than of Q. If he didn't give the "right" testimony, Q would fire him. What's more, Harry's wife was disabled and receiving disability payments from the welfare department. If Harry didn't deliver the goods at trial, Q would find a way to cut off Mrs. Stubbs's benefits. No job, no disability income, no money—not a pleasant prospect for Harry. Maybe he met with me because he thought I could help him against Q in the future.

Harry was drinking to calm his nerves—first beer, then the hard stuff. We chatted for a while, and when he got pretty loose I sprung the crucial question: "Harry, as I read the regs, Juan was eligible for AFDC even if he had a small amount of cash, like \$200. Is that right?" Harry gave the answer I wanted: "That's correct."

Here was the hole in the DA's case. Juan was charged with violating a code section that criminalized lying about a "material" matter to get welfare. If Juan was eligible even if he had \$200, the lie was not "material." I could *argue* this, of course, but it would have much more impact coming from the prosecution's key witness.

As Harry spoke, I wrote on a yellow legal-size notepad. Harry probably thought I was taking notes, but I wasn't: I was writing Harry's statement for him to sign. After I wrote down his "That's correct," I put the pad in front of him.

"Harry, could you please read what I wrote and tell me if I got it right?"

He read the statement, slowly, and said, "Yes, this is right."

I offered him a pen. "Could you please sign it?"

Harry started shaking. He looked at the pen, but waved it off. "I can't do that. Q will get me and my wife."

"Thanks for your cooperation, Harry."

He staggered out of the bar. At the bottom of the yellow pad, I wrote the date and "I saw Harry Stubbs read this statement and heard him say 'Yes, this is right.'" Then Paul and I signed it. I didn't know if this would help, but I didn't know what else to do.

When Paul went back to McFarland the next morning, I was on my own again.

At the monthly luncheon of the Yuba-Sutter Bar Association, I asked Yuba County's public defender, "How do you get a not-guilty verdict from a Sutter County jury in a welfare-fraud case?"

"You don't."

"You don't?"

"Right. You don't. Once these farmers hear that your client got welfare benefits, that's welfare fraud to them."

Great. It seemed that my best chance in *People v. Ruiz* might be the judge. All the local ones had disqualified themselves from the case—running scared of losing the next judicial election. So a visiting judge from Roseville was brought in.

At the trial, the prosecution's first witness was Harry Stubbs, Juan's caseworker. On direct examination, Harry testified as predicted: Juan said he had no money, so he got AFDC, but Juan later told Harry that he had about \$200 when he applied.

Time for cross-examination.

"Mr. Stubbs, even if Mr. Ruiz had \$200, he still would have been eligible for exactly the same benefits for his family. Isn't that true?"

Harry coughed and squirmed. He looked behind me, to my left. I glanced in that direction. There was Q, glaring at Harry. I picked up my yellow notepad, which still had Harry's statement on the top page—with my signature and Paul's signature on the bottom. I held it high, where Harry could see it—but too far away for him to read it. He leaned forward and squinted. I said nothing, just held it there. I could almost hear Harry thinking, *That yellow pad! Is that my signature? I can't remember. Too many drinks. But if I signed it ...*

I asked him again. "That's true, isn't it?"

Harry looked at Q, then back to the yellow pad, then to me. "It's true."

I said to the judge, "Your Honor, I move to dismiss. The alleged \$200 was not material." Dave the DA was not ready with a response. "Motion granted," ruled the judge.

Before the jurors left, I collared a couple. "So what did you think?" "Guilty as sin," they replied. Apparently the public defender was right.

One down, two to go. But I might not be so lucky next time.

I did catch a break on *People v. Serrano*.

The DA phoned me. "We'll dismiss the charges if he pays back the welfare money he got."

"Why, Dave?"

"We're having trouble getting a witness we need at trial."

On his AFDC application, Antonio Serrano had stated that he'd earned \$150 in January, working for a farm labor contractor. But Dave's complaint alleged that the contractor's records showed that Antonio was paid \$250.

Antonio had told me that the extra \$100 was earned by his buddy, who had borrowed his Social Security card—a common practice among migrant farmworkers. So we had a good defense, if a jury would buy it. The prosecution's problem was that the contractor had gone to see his family in Mexico and was not available.

I could have held Dave's feet to the fire and turned down the offer. He'd probably dismiss anyway. But after seeing the jury's reaction in *Ruiz*, I couldn't take the chance that the contractor might somehow show up.

Antonio didn't want to pay back the welfare money, which was only about \$300. "I did nothing wrong," he complained. But when I explained the risk, he reluctantly agreed.

Two down, one to go.

My third defendant, Shirlee Ann Decker, was an Okie—born of people who lost their Oklahoma or Arkansas farms to the dust storms of the 1930s, like the Joads in *The Grapes of Wrath*. There were a lot of Okies in Yuba-Sutter. Shirlee lived in Live Oak, north of Yuba City, with her teenage son. Shirlee was dark-haired, in her 30s, and divorced. She worked part time as a maid at a motel, which paid so little that she qualified for AFDC.

She also had a boyfriend, Claudius, a bald guy in his mid-50s. Nothing wrong with that—unless he was living with Shirlee. If he was, the welfare regs required her to report *his* income to her caseworker, so her AFDC grant could be reduced according to the portion of his income supposedly used to help support her.

Dave alleged that Claudius *was* living with Shirlee, and that she had failed to report this and kept receiving AFDC benefits. Voilà: welfare fraud.

At my office, I asked her, "So what was your relationship with Claudius?"

"We sleep together sometimes, at my place."

Neither the W&I Code nor the cases had a definition of *living with*. So I tried to think of some factors that might be relevant.

"Does he have his own place?"

"Yes."

"Does he keep any clothes at your house?"

"No."

"Does he eat his meals at your place?"

"I make him dinner once in a while."

"Does he help pay your rent?"

"No."

"Does he bring you groceries?"

"Just a six-pack of beer sometimes."

This, to my mind, was a romantic affair, but not "living with." Still, would a jury believe Shirlee's answers?

I obtained a list of the witnesses Dave planned to call at trial—about 30 in all, a sizable portion of Live Oak. For a week I drove there every day, to talk to each of them. A typical interview went like this:

"Mrs. Gaines, what do you know about the relationship between Shirlee and Claudius?"

"Sometimes I see his truck parked in her driveway at night, and a couple of times I've seen him leaving her house early in the morning."

"Does he keep any clothes there or give her any money?"

"Oh, I wouldn't know anything about that."

That's it. And that was Dave the DA's case, pretty much. There was just one witness that had me worried: Shirlee's brother Art was on the list. I brought him in and asked him why.

"They expect me to testify that my sister told me she was living with Claudius."

"Did she?"

"No. Never."

"Then why do they think you'll say this?"

"Dave has this investigator, Dansby. He found me at a lumber mill I was working at, and he took me to a bar. He got me juiced up with booze and then asked me about Shirlee. I'd had an argument with her a couple of days earlier, so I was mad at her. I *might* have told Dansby they were living together. But they weren't."

The trial began in Live Oak in late August, when the temperature outside was in the high 90s. To accommodate all the spectators (almost every resident of the town, it seemed), the trial was moved to the city council chambers.

After jury selection, the DA put on his case. Dave was a heavysset man with a buzz cut. Pretty nice guy, when he wasn't prosecuting your client. He had Mrs. Gaines and most of his other witnesses testify that they saw Claudius coming out of Shirlee's place in the morning, etc. On cross, I got them to admit that they didn't know if Claudius kept his clothes there, paid rent, and the like.

About 4 o'clock, Dave said to the judge, "Your Honor, I seem to have run out of witnesses for today. Could we recess early?"

I said, "That's not quite true, Judge. The prosecutor subpoenaed the defendant's brother Art, and he's over there in the back of the room."

The DA was sitting with Dansby, his investigator, and both of them gave me a funny look. Why was I helping them put on their case?

Dave said, "Sorry. I guess I overlooked him."

Art took the stand, and Dave got right to the point. "Was the defendant living with Claudius?"

"Nope!"

Not the answer the DA expected. He huddled with Dansby. Then Dave asked, "Didn't you tell Mr. Dansby that your sister had *told* you they were living together?"

"To be honest, Dansby got me so liquored up that I could have told him anything. But Shirlee never said they were living together, because they weren't."

Chuckles broke out in the room, and the judge banged his gavel. "Any more from this witness?"

"One moment, Your Honor."

There was another huddle with Dansby, who reached into his briefcase and handed something to the DA. Dave rose and held it up.

"Judge, Mr. Dansby taped his conversation with the witness. We'd like to play this tape, so the jury can see that Mr. Dansby did nothing improper."

Dave played the tape. But the conversation was unintelligible, because the clinking of glasses and drunken laughter drowned out the voices. Louder chuckles filled the chamber.

Court was adjourned. The DA walked past me, seething. "You knew this would happen, didn't you?"

"Hey, he's your witness, Dave."

The next morning, Dave called Shirlee's caseworker, Betty Edwards, to the stand. She explained the regulations that required an AFDC recipient to report the income of any person she was "living with." Time for cross.

I asked, "Ms. Edwards, you never explained these regulations to the defendant, isn't that correct?"

She paused—for quite a while—seeming to look past me.

"I *did* explain them to her."

I didn't like the answer, but it didn't surprise me. All I could do was hope the jury would believe Shirlee when she testified to the contrary.

We took a break. My new associate, David Averbuch, had come along to observe, and he was all excited. "Q was sitting right behind you, shaking her head, telling Edwards how to testify. You couldn't see it, but I did."

When we reconvened, I said to the judge, "Your Honor, I move to strike all of Ms. Edwards's testimony on direct, because Mrs. Quitarano deprived defendant of her constitutional right of cross-examination. With her gestures, she told the witness what answer to give."

The judge excused the jury. David took the stand and testified to what he saw, Q testified she did no such thing, and Edwards testified that she didn't even see Q. "Motion denied."

Ladies and gentlemen of the jury," I began, "you probably don't like the whole idea of welfare. But you are all loyal Americans, and Americans believe in the rule of law."

Young and brash, I refused to believe the public defender's opinion that a Sutter County jury would equate welfare benefits with welfare fraud. I believed I *could* persuade a jury of farmers to acquit a welfare recipient, with the right approach. At the time, the Vietnam War was raging, and I knew these people prided themselves on their patriotism.

"Judge Hill will instruct you on the law, that you may convict Ms. Decker only if you find, beyond a reasonable doubt, that she 'lived with' Claudius."



I went over the evidence, and ended with a flourish. "And as patriotic Americans who believe in our sacred system of justice, you will—I trust—put aside any personal feelings about welfare and do your duty to apply our American law to the facts you have heard. Thank you."

Nice try, but less than an hour later the jurors came back with a guilty verdict.

The next week, we showed up for sentencing. Shirlee had no prior record, so the public defender had told me to expect 30 days' jail time, plus a few months' probation.

Q was there to gloat, of course, along with Dave Teja. It was the only time I ever saw Q smile.

I was miserable. I'd let down Shirlee, myself (how *could* I have patronized the jury with that "loyal American" crap?), my clientele, and my staff—if this was the end of my office.

My only ray of hope was tiny. I'd filed a motion for a new trial, based mainly on the judge's refusal to instruct the jury that Shirlee lacked the required mens rea (guilty mind) if she hadn't been told about the "living with" regulations. Since the judge had already rejected this argument at trial, I didn't expect much, but it might form the basis for an appeal. I also threw in a request that the judge simply dismiss the case in the interest of justice, based on some obscure Penal Code section I'd come across. No hope for that one.

"Counsel, I've read defendant's motion for new trial and the prosecutor's opposition, and I think defendant is right," pronounced the judge. "The motion is granted."

Dave, Q, and I all stood there with our mouths agape—Q and Dave at the sudden evaporation of their victory, and me at finding a Sutter County judge with guts.

The judge turned to his clerk. "When's the next date open for a retrial?"

The clerk studied her calendar. "Judge, with harvest season coming up, we won't be able to get a jury till early November."

The judge shook his head, pondered a moment, then turned to me. "Counsel, are you sure I have the authority to dismiss this case?"

I couldn't believe it. "Yes, Your Honor, yes. Listen to this." I pulled out the code section and read it to him.

"Case dismissed," he said in reply.

Q and Dave looked like they were about to have heart attacks. But Dave recovered and started to say something to the judge.

I grabbed Shirlee's arm and ran her out of the courtroom. "The judge can't change his mind if we're not there, Shirlee. We won!"

Of course, the DA appealed the dismissal in *People v. Decker*, but we prevailed. We also won our appeal in the class action. But by then I'd left CRLA and moved back to Berkeley to help run the National Housing Law Project at Boalt Hall.

Now, 40 years later, the CRLA office in Marysville is still going strong, fighting the good fight, despite my blunders at its birth.

I had heard that, after I'd left so long ago, things calmed down a bit in Yuba-Sutter. Q started obeying the regs, and poor people were treated better. So I can't say I ever persuaded a Sutter County jury, but my office did win the welfare war there

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