In the

Supreme Court of the United States

A. Y. ALLEE ET AL., Appellants	)	
vs	)	Docket No. 72-1125
FRANCISCO MEDRANO, ET AL., Appellees.	)	

Washington, D.C.

November 13, 1973

Pages 1 thru 42

HOOVER REPORTING COMPANY, INC.
Official Reporters
Washington, D. C.
546-6666

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v.	:	No. 72-1125
FRANCISCO MEDRANO, ET AL., Appellees.	:	

Washington, D. C.

Tuesday, November 13, 1973

The above-entitled matter came on for argument at 1:42 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

LARRY F. YORK, ESQ., First Assistant Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711, for the Appellants.

CHRIS DIXIE, ESQ., 609 Fannin St. Building, Suit 401, Houston, Texas 77002, for the Appellees.

I N D E X

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear argument next in No. 72-1125, Allee against Medrano.

Mr. York, you may proceed whenever you are ready.

ORAL ARGUMENT OF LARRY F. YORK ON BEHALF OF THE APPELLANTS

MR. YORK: Mr. Chief Justice, and may it please the Court, I would like to briefly summarize the facts of this case and describe to the Court how the case got here in a very brief fashion, and then to discuss the constitutionality of the statutes which are discussed and then to discuss the intervention question and the propriety of the Federal intervention in this case.

In about June of 1966 intensive efforts began by the AFL-CIO in TExas to organize and unionize the Farm Workers in the Rio Grande Valley of southern Texas. Those efforts were marked by picketing and demonstrations which went on over a period of about 13 months, from June or so of 1966 up until approximately June of 1967. During that period, the Texas Rangers, five of whom are defendants in this case, who are the only defendants who have appealed, were called in, first, I believe the record will show, in about November of 1966 for the purpose apparently then of serving ten warrants on people who had already been charged with committing the violation of having a secondary strike by the local authorities. The Rangers

came in to serve those ten warrants.

The Rangers came into the area again in May of 1967 at the request of local officers and from that time until the picketing ended in June of 1967, roughly six weeks or two months period, the Rangers made several arrests in this area of striking which covered a number of counties. It covered a larger number of strikers and picketers.

The arrests made by the defendant Rangers during this approximately six-weeks or perhaps shorter period than that totaled about 45, including 28 for mass picketing under the Texas statutes, 13 for unlawful assembly, and one for no driver's license, one for threatening the life of a Ranger, and one for brandishing a weapon in a public place.

Other arrests were made --

QUESTION: Can you tell us what type of a weapon?

MR. YORK: I believe it's described as a rifle. Mr. Dimas, who is one of the plaintiffs in the case.

A total of, if I read the record correctly, about 70 arrests of individuals were made over this 13-month period by both the Rangers and the local law enforcement officials in this several-county area in which the mass operation of organization was going on.

QUESTION: How many arrests?

MR. YORK: About 70, your Honor. That's 70 individuals.

QUESTION: They made more arrests than that over the

13-month period, I am sure, various people. But you mean 70 connected with this labor organizing activity?

MR. YORK: Your Honor, I believe, as stated in the appellees' brief, the total they come up with is about 60 arrests made in all counties during this entire dispute.

QUESTION: You mean of anybody for anything?

MR. YORK: That's my understanding, your Honor, and I believe that's what the record shows.

QUESTION: So that many of these arrests weren't at all connected with the activity involved in this case?

MR. YORK: Well, they were -- of these 60 or 70 or so arrests, they were all, with one or two exceptions, the driver's license and the brandishing a weapon, and so on, involved the statutes which are before this Court and which were before the three-judge court.

QUESTION: They were arrests of people, were they not, or have I got it all wrong, involved in this union organizing activity.

MR. YORK: Yes, sir, that's correct.

QUESTION: You're not talking about the total arrests in that county --

MR. YORK: Oh, I'm sorry. No, sir.

QUESTION: That was my question.

MR. YORK: No, no. We're not saying that that's all the arrests that there were ever in that county during this

13-month period.

QUESTION: So all of these 60 to 70 arrests were connected with what is at issue in this case.

MR. YORK: Yes, sir.

QUESTION: Mr. York.

MR. YORK: Yes, sir.

QUESTION: From my own glance at the appendix, I developed the idea that as to Article 482, the section on abusive language that the district court invalidated, none of the individual plaintiffs in this case had been prosecuted under that particular section.

MR. YORK: I believe that there were arrests under that section, your Honor.

Your Honor, I am not certain I can answer that question without referring to the record.

QUESTION: I might say I share the same inquiry.

MR. YORK: I will hope to touch that in rebuttal, if I may, your Honor.

The arrests we have talked about ended at about June of 1961. This period of 13 months or so was marked by acts of vandalism, as the record shows, directed toward the farm owners in the sense of finding sugar in gas tanks and punctured tractor tires, stolen generators, and that kind of thing.

The three-judge court found that the law officers,

including the Ranger defendants had acted unlawfully toward the strikers by harassing them and intimidating them for the purpose of ending the strike.

In June of 1967, State civil injunctive proceedings were filed in the State district court of Starr County, one of the counties involved, in a case styled La Casita Farms v. AFL-CIO Organizing Committee. That injunction relating to La Casita Farms was granted by the court in July of 1967, July 11, 1967, enjoining all picketing against La Casita which was one of the major employers in the area on the basis that the picketing was shown to be so intertwined with violence and disruption that it passed any legitimate form of communication, so that all picketing was enjoyed of La Casita Farms.

The union appealed the injunction to the Court of Civil Appeals of Texas, and the trial court was affirmed. That is reported at 459 S.W. 2d. 398. And that, of course, is not involved in this case. That is another injunction. And that is what we say that the record shows ended the strike in the area, was the fact that there was a State injunction in June of 1967.

In July of 1967 or thereabouts, the plaintiffs filed this action with the result that the lower and the three-judge court and we are here today.

I would like -- yes, sir.

QUESTION: I gather the state injunction proceedings

was completed, no appeal was taken from the injunction?

MR. YORK: It was appealed to the Texas Court of Civil Appeals.

QUESTION: I mean as of the time this action was brought.

MR. YORK: Your Honor, I can't tell you precisely. The injunction was entered on July 11, 1967. This case was filed -- I don't have the precise date, but it was filed, I believe, in July of 1967. Ordinarily that would mean that the appeal could not have been completed by that time.

QUESTION: Do we have the date when the affirment of the appellate court was entered?

MR. YORK: It was in 1968.

QUESTION: The State injunctive proceeding must still have been pending when this action was filed.

MR. YORK: Yes. It became -- the court's opinion was December 31, 1968, and there was --

QUESTION: Let me ask again (inaudible).

MR. YORK: Yes, sir.

QUESTION: Is that the highest court they could appeal to?

MR. YORK: No, sir. The Texas Court of Civil Appeals is our intermediate court. The record does not reflect that there was any attempt made to appeal from that court by the union to our Texas Supreme Court.

QUESTION: And that's a discretionary appeal, is it?

MR. YORK: Yes, sir. It may or may not be taken, but the record will reflect whether an attempt has been made to take it.

Section 5154d of our statute involving mass picketing is what I would like to address myself to at this time.

Texas is one, so far as our research has been able to develop, of only three States, although perhaps more, who have adopted a specific statute defining what mass picketing is. However, the equity courts of this land have recognized for a long time that the concept of picketing, while it involves speech, also involves conduct, and that the conduct side of it may be regulated in the absence of statute. So that the concept of mass picketing, picketing which transcends the speech elements of communication and moves into the conduct area, may be regulated by the courts. And a variety of cases in many jurisdictions are cited in our brief in New York, in New Jersey, and in Ohio where the number of pickets has been specifically limited by an equity court in an injunctive process.

QUESTION: That would be in the circumstances of a particular case, and after a showing of violence, would it not, or threatened violence growing out of the circumstances in a particular case shown to a court of equity?

MR. YORK: Yes, sir. Although we would say, your Honor, that it would not be limited to violence. It might

be and has been shown in a situation where there has been a showing of simple blockage of the reasonable right to ingress and egress, or other forms of conduct short of violence which are thought to be violative of a valid state policy.

QUESTION: How many other States did you say have a statute such as this that makes it applicable to every kind of situation involving a labor controversy?

MR. YORK: Your Honor, if our research is correct, the State of Nebraska has a statute which is almost identical to the Texas statute, talking in terms of 50 feet. It's almost a twin of our Texas statute.

The State of South Dakota has a different sort of statute which talks in terms of the number of picketers being limited to 5 percent of the first 100 strikers and 1 percent thereafter, I believe is the South Dakota scheme.

The cases from other jurisdictions are numerous on the point of injunctive relief on a case-by-case basis.

QUESTION: Right.

MR. YORK: We are also aware of this Court's ruling in the Vogt? case in 1957 which establishes the principle that picketing, even peaceful picketing, even clearly peaceful picketing, may be regulated by the State, recognizing that a part of picketing is conduct if the picketing, as in the Vogt case, has as its primary purpose the violation of a particular state policy which is a valid state policy.

So the backdrop for regulation of picketing is found both in the common law notions and in the various equity court notions of injunction and in this Court's ruling in the Vogt case. And what Texas has done is simply to adopt a statutory scheme to in effect codify the doctrines that have been expressed in the other courts of what mass picketing amounts to.

The Texas statute is limited to the labor context. We don't pretend, and the statute can't be read, we submit, to apply to any other kind of picketing. Indeed, the AFL-CIO in their amicus brief at page 2 concedes that it was aimed at labor unions. The preamble to the statute states clearly, when the statute was passed in 1949, it was stated by the legislature that it was a matter of public knowledge that picketing as exercised by labor organizations is not used only as a means of expression of ideas to the public generally, but likewise is a means of coercion through the presence of the picket line, et cetera. This is in the preamble to the statute. The statute by its terms is limited to picketing by organizations.

The statute has never been applied otherwise in Texas, except in the labor picketing context. It is located in the labor section of our statutes and applies to nothing else.

The court below, the three-judge court, stated that one need only look at the Davis v. Francois case out of the Fifth Circuit to determine that our statute was unconstitutional. But in the Davis case, the Louisiana ordinance that was passed

said that you cannot have more than two pickets, period, the end.

QUESTION: How was section 1 applied? Two pickets -- that is in relation to picketing at entrances.

MR.YORK: Yes, sir.

QUESTION: Apparently pickets have to be at least 50 feet away from the entrance.

MR. YORK: Well, there can be no more than two pickets within 50 feet.

QUESTION: And the pickets have to be 50 feet apart, is that it?

MR. YORK: There can be two pickets. If you can visualize the door, there can be two pickets at that door, but there could be no more than two within 50 feet of the door.

QUESTION: May they be within 50 feet of one another?

MR. YORK: Yes, sir. That's correct.

QUESTION: Well, the two could be (inaudible) each other.

MR. YORK: Right. Two pickets may be less --

QUESTION: Right at the entrance. Two could be right at the entrance.

MR. YORK: Yes, sir.

QUESTION: The next two have to be at least 50 feet away.

QUESTION: That is what I was trying to get at. Not that

there may be only two pickets 50 feet apart. It's not that. They may walk in pairs. The pairs have to be 50 feet apart.

MR. YORK: Yes, sir. That's correct.

You can envision a city block, if we assume it to be 300 feet on a side, 1200-foot perimeter. It would depend somewhat on where the doors are located, but the number of pickets who might surround that block under our statute would be somewhere between 40 and 50, or between 40 and 48.

The object, as we perceive it, of picketing is to communicate. And it's impossible for us to see, under the cases and under our statute, how there is any infringement on the right to communicate under our statute. There was no evidence submitted, it is not even suggested in the brief or in the record by the appellees that their right to communicate their dispute in the Rio Grande Valley of Texas was in any fashion inhibited by this statute. Indeed, everybody in the valley knew the dispute. And in the normal labor context, one simple sign is enough to advise the public and advise other unions, et cetera, that there is a labor dispute going on without there being further conduct of a harassing type.

The Farah brief, which is one of the amicus briefs filed, indicates that their particular plant can have as many as a hundred pickets around it and fall within the coverage of the Texas statute, and you can conceive of plants that might have hundreds of pickets around them and still be entirely

legal within the meaning of the Texas statute.

QUESTION: Then a business that had only a 49-foot frontage, could only have two pickets.

MR. YORK: I don't think, your Honor, that it would be limited to frontage. If the building were 49 feet around, it might well be limited to two pickets for that building.

QUESTION: Well, this is a building in a whole line of buildings going down the street, and this one has got 49 feet, that's all that's available. It could only have two pickets.

MR. YORK: I think in that case that it would be limited to two pickets.

The obstruction portion of the statute -- the statute has two parts. One is to describe mass picketing in terms of the 50-feet rule. The second part is to talk in terms of forming an obstacle to free ingress and egress from any entrance either by obstructing said free egress and ingress by person or by placing a vehicle or other obstruction there.

Our Texas court in the Geissler case, which is mentioned both in the three-judge court opinion and in our brief, held that the obstruction talked about meant only a physical obstruction, not any other kind of obstruction. It was suggested in the Geissler case, for instance, that the holding of a particular type sign or flag might well keep people out, and the court said, no, that won't get it. It has

to be a physical obstruction. The fact that some people choose not to cross a picket line is just one of the accepted perils of picketing. We are not going to enjoin that.

The Cameron v. Johnson, which Mr. Justice Brennan lately approved a Mississippi statute, we say, is totaly dispositive of our case. The Mississippi statute talked about picketing in such a manner as to obstruct or unreasonably interfere with free ingress and egress. It is in the subjunctive. That is, it is "or." So the Mississippi statute can be read to say that you may not obstruct free ingress and egress. Our statute says you may not obstruct free ingress and egress.

The Court in Cameron stated that the term "obstruct" plainly requires no guessing as to its meaning. We agree.

The appellees here when they submitted their final proposed revised judgment to the court below in this case did not include the obstruction portion, the second portion of 54d in their proposed findings of relief and did not in that context ask the court below to find the obstruction portion of 54d unconstitutional.

The three-judge court in a later part of its opinion in finding Article 784 of our Texas statutes to be constitutional, and that statute says whoever shall wilfully obstruct or injure or cause to be obstructed could there construe the word "obstruct" to mean actual prevention or substantial interference

with traffic.

QUESTION: Cameron v. Johnson, was that a very similar statute? That was an obstruction statute.

MR. YORK: Yes, sir, that's correct. And we say that when you read the Cameron statute side by side with ours and read the meaning of the word "obstruct" in it with ours, the conclusion is inescapable that ours is all right under Cameron v. Johnson.

QUESTION: Mr. York, (inaudible) prevent the named defendants, the appellants here, from going ahead with the ... criminal prosecution under the statute ...

MR. YORK: Your Honor, I don't believe -- my reading of it is that it did not. It may be said there is some disagreement.

QUESTION: Looking at the jurisdictional statement, page 101, paragraph 15 of the final judgment, the last few lines over on page 101, they were enjoined from arresting, from imprisoning, from filing criminal charges, from threatening to arrest. You say that could be because it doesn't use the word "prosecute", the ... were free to go ahead and prosecute?

MR. YORK: Well, we would not suggest that to the state officials, your Honor, and wouldn't suggest that be done under the terms of this judgment. As a matter of fact, I don't believe prosecutions have been followed because of this

case.

QUESTION: (Inaudible)

MR. YORK: As a practical matter it has been so treated, although I don't think you can read the precise language of the judgment and find that in it.

QUESTION: You have a narrow line to walk, though.

MR. YORK: Yes, sir, extremely.

I would like to touch very briefly on the question of equal protection under our 54d statute which applies to labor organizations and does not by its terms apply to other organizations. We are aware of Mr. Justice Marshall's decisions in Mosley and Grayned. In Mosley, as the Court is aware, there was a statute in Chicago which stated that there could be no demonstrations around a public school within 150 feet of that public school except that labor disputes were not so enjoined or so restricted.

This Court found that to be a violation of equal protection clause. We would submit, your Honors, that our case differs from that in several important respects. For one, the restriction that is imposed by our statute as it intersects with First Amendment rights is a valid and legal restriction. I think the Court, even though it decided in Mosley on equal protection grounds, seemed to have in its mind somewhat the concept that it was difficult or shouldn't perhaps be allowed to enjoin the kind of public issue picketing that was prohibited

by the statute in the Chicago case, Mosley case.

Ours, as we have stated before, is a reasonable restriction on those rights. The other and perhaps more important restriction, I think, is that in Mosley the Court was confronted with a situation where of the entire universe of picketing, a small area, that is labor picketing, had been singled out and not regulated. The rest of the universe had been assumed to be bad and regulated by the statute. In our situation we have the flip-flop of that. We have the entire universe picketing all unregulated by our statute except the narrow portion of labor picketing, which is regulated for the reason set out in the preamble to our statute. And we say that in that sense we have made a reasonable classification and that the equal protection statements made in the Mosley case do not apply to this case.

Additionally in that regard, we would mention to the Court that there was no suggestion made or proof made of any arbitrariness in this statute by the plaintiffs as they tried the case.

I would like, if I may, to reserve a few minutes for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Dixie.

ORGAL ARGUMENT OF CHRIS DIXIE ON BEHALF

OF THE APPELLEES

MR. DIXIE: Mr. Chief Justice, and if the Court please, we made it clear to the district court and we filed several briefs in which we stated that we do not intend to interdict any pending criminal prosecution. One of our observations in this case has been so many arrests and not one case set for trial. As far as we are concerned under this order, these criminal cases could be tried, other criminal cases could be filed under the statutes. Any State official other than the named defendants and those acting in concert with them and successors in office can prosecute under these statutes.

QUESTION: What about enforcing the injunction entered in 1967?

MR. DIXIE: That injunction runs against five Texas Rangers and five peace officers down there.

QUESTION: Were any of them defendants in this suit?

MR. DIXIE: Yes, sir, that's who the defendants were.

QUESTION: How about enforcing that 1967 injunction?

MR. DIXIE: The '67 injunction, what are you referring to, the State court injunction?

QUESTION: Yes.

MR. DIXIE: I have a little correction to give you on that. Counsel was not with us on the ground or in the trial

court. That state court injunction was an application for temporary injunction which alleged that the picketing was illegal for many reasons and the trial court granted that injunction.

The Court of Civil Appeals reversed that and said that picketing was legal in all respects insofar as its purposes was concerned. But they said there is some circumstantial evidence of destruction of property, dropping of nails, putting gasoline in tanks, and so forth, and we will hold that that circumstantial evidence was sufficient to justify a temporary injunction only and we express no opinion as to what will be the situation when the case comes forward on the merits.

QUESTION: Is that where the case sits now?

MR. DIXIE: That's right.

QUESTION: It has never come forward? It's still a temporary injunction?

MR. DIXIE: That's right. And it took the Texas courts --

QUESTION: And the case is still pending.

MR. DIXIE: That's right. And it took the Texas courts about three years to settle the question of a temporary injunction.

QUESTION: Were the defendants there some of the plaintiffs here?

MR. DIXIE: The union was a common party.

The United Farm Workers Organizing Committee.

QUESTION: Mr. Dixie, in paragraph 15 of the final decree on page 101 of the jurisdictional statement, the injunction does cover imprisoning. Would a proper construction of that be that although you could prosecute, you couldn't imprison somebody? Or would that just mean imprisoning prior to filing of charges?

MR. DIXIE: Your Honor, a proper construction of that, I believe, would be that these particular officers should not arrest people and put them in jail under these particular statutes. But it doesn't say that the county attorney or the district attorney or the Attorney General can't file charges and cause a warrant to issue and arrest somebody and prosecute him all the way through, a very limited injunction, because the essence of this case is the abuse of the police power in the manipulation of these statutes by these people who the findings of fact established were acting in active concert with the private owners to break the strike through a period of one year. We were attempting to get relief from these wholesale arrests and mistreatments that we were subjected to. And then, as far as litigation was concerned, we were and are prepared to defend ourselves any time that these things are set for trial.

QUESTION: Yet the district court, certainly the thrust of its opinion isn't that the valid statutes were being

abused in violation of your clients' constitutional rights, but that the statutes themselves were invalid.

MR. DIXIE: Yes. Yes, they held that.

QUESTION: Furthermore, I wouldn't think that the fact that they didn't enjoin any pending criminal prosecutions would avoid the thrust of the Younger cases, where it seems to me that the court went ahead and at least declared these statutes unconstitutional when at least with respect to some of these statutes there were pending State criminal prosecutions.

MR. DIXIE: Yes. Yes.

QUESTION: What have you got to say about that?

MR. DIXIE: Well, we took the bull by the horns and we say that we are well within the doctrine of the Younger cases. As a matter of fact, if this fact situation is not strong enough to satisfy Younger, we doubt that you will ever find one.

QUESTION: Would you say that the harassment and bad faith would have to exist with respect to each of these statutes?

MR. DIXIE: Well, your Honor, these statutes were interwoven in their use, and they were used --

QUESTION: Your answer apparently is no.

MR. DIXIE: That's right. That's right. It's a whole --

QUESTION: You could just find a general pattern and

then pick out any statute you want and say there is bad faith in its enforcement.

MR. DIXIE: Well, no.

QUESTION: That's what you did here apparently, because with respect to some of these statutes, concededly there is no bad faith enforcement.

MR. DIXIE: Oh, no, with respect to --

QUESTION: Then you say with respect to each one.

MR. DIXIE: That's right.

QUESTION: And you must show that.

MR. DIXIE: That's right. With respect to each one there was bad faith --

QUESTION: That's the problem with the record, then, seeing that you satisfied that.

MR. DIXIE: That's right.

QUESTION: I gather, looking at page 50 of the jurisdictional statement, you have explicit finding by the three-judge court that all of those prosecutions under each of these statutes rested in bad faith and for the purpose of harassment.

MR. DIXIE: That is correct.

QUESTION: You say that is what brings you within the Younger exception.

MR. DIXIE: That is correct.

QUESTION: As my Brother White has said, I suppose

that depends on the record. We have to go into this record to see whether that is supported by what, by substantial evidence, or what?

MR. DIXIE: Why, your Honor, these fact findings are unchallenged. You have extensive district court fact findings, and you don't have one mention of Rule 52 or any statement that they are clearly erroneous or anything like that in this case. I have been so puzzled why the Attorney General has presented the case this way when he filed his jurisdictional statement up here. He made no issue of the findings of fact, and we called it to the court's attention; and then when he filed his brief on the merits, he did the same thing. They just ignore the fact findings of the district court. And this is a very remarkable case in its fact, almost unduplicated. In fact, it is unduplicated in any decided case that I know of.

I suggest, your Honors, that we start in this case with the findings of fact which have not yet been challenged.

Now, then, moving on --

QUESTION: Before you go on, you referred to wholesale arrests. Am I correct that the arrests were at the rate of about one a week here, or not?

MR. DIXIE: That's not correct, your Honor.

QUESTION: If it's 13 months, it would be not much more than one a week, would it? You said 60 and I think someone

else said 70 in the briefs -- arrests. Or are those figures wrong?

MR. DIXIE: Well, I am afraid you do, your Honor. May I summarize it for you this way: I believe --

QUESTION: There were a number of arrests.

MR. DIXIE: I believe our arrests say that we have produced 55 cases of arrest while the arrestees were engaged in First Amendment protected activities.

QUESTION: I am just interested now in the number. You can argue it later.

MR. DIXIE: That's right.

QUESTION: Fifty-five.

MR. DIXIE: It didn't work that way. As a matter of fact, these arrests built up to a crescendo, and that's probably one thing I should explain to you. On May 11, the union developed important support on the Mexican side and the situation developed that the Mexican farm workers were not coming across the bridge to work through these picket lines. On that day at 4 o'clock in the morning Captain Allee, the Texas Ranger, got up out of bed and drove one or two hundred miles forthwith to the scene. Then there started a series of arrests interspersed with brutality, beatings, terrorism, the works, from May 11 until June 1. And on June 1 the union threw up its hands. No one could get adherence under those conditions.

So the average of one a week is a mechanical average, but it doesn't reflect the crescendo of activities.

QUESTION: They were concentrated in that period.

MR. DIXIE: Why, of course.

QUESTION: What is the timing in terms of this business of putting sugar in the gas tanks and some violence was suggested. When did that occur in relation to the period you are talking about?

MR. DIXIE: Well, it was unrelated to it. I can't answer you directly. I'm not even sure that that's in this record. But I think that what they are complaining about happened about a year before this May of 1967. Of course, you are aware of the fact that the district court found that none of these things was brought home to the union or any of its members in the proof. This district court found that. And they also found that in the entire year, the only case of physical violence was when one of our people reached and touched the arm of a truck driver as he passed by, taking him by the sleeve, and the sleeve of course slipped out of the man's hand and the truck went on. And the district court explicitly found that that was the only case of physical violence on the part of any union adherent during the year.

Now, to go to your other question, your Honor. Down in south Texas you get about four crops a year, and there is a planting time, and there is a harvesting time. And these rash

of arrests took place at the times when the union would accelerate its activities to reach the workers during the planting time, during the harvesting time. That's when the work force is large. That's when the union would make its effort to organize, and that's when the arrests would take place.

So the arrests were well timed to counteract the potential effectiveness of the strike.

Now, to move on, this case was filed as a class action by the union and by several individuals, and the court found that it was a proper class action by these people, and they are adequate representatives of the class, and there has never been any question in the district court from the defendant about the propriety of that.

The fact findings recite that there was a one-year conspiracy of arrests without charges, dispersants, threats, bonding abuses, inducements by peace officers to the strikers to abandon the union and go back to work, and physical violence. All of it was mixed up with and interspersed with the institution of prosecutions in bad faith.

QUESTION: Mr. Dixie.

MR. DIXIE: Yes, sir.

QUESTION: The district court opinion on page 41, relating to Article 482, the abusive language statute, says that five union members had been arrested on that day. It

doesn't indicate that they were named plaintiffs in this action. Was one of the named plaintiffs in this action at some time according to record prosecuted under 482?

MR. DIXIE: I would have to check the record to determine that. I know union officers were. And I will have to check to answer that. I will have to check to see who was there that day and was arrested.

Now, then, the judgment, as I have told the Court, does not interdict any pending prosecutions. It's a limited injunction. And part of the injunction is civil rights relief under 1983 and 1985 on account of the conspiracy of these public officers to abuse the color of their officers.

I would like to tell the Court something about the legal background of this case. Texas law provides in a statute cited in our brief that any person may try to induce any other person to quit any employment and join the union for the purpose of bettering their conditions. Texas law gives the right to bargain collectively or individually. It provides that if a labor contract is signed, the contract is lawful and may not be violated. That is similar to section 301 of the Taft-Hartley Act. So that everything that the plaintiffs did in this case in terms of their ultimate objective was lawful under the Texas statute, and the Attorney General stipulated as much at the trial of the case.

So in all of the application of the statutes, please

bear in mind, your Honors, that at no time were we doing anything prohibited by Texas law.

Now, Texas law also provides that an employer has no duty to recognize a union. He may contract with it or he may refuse. He may contract for all of them or some of them or one of them. And if he doesn't want the union, he has got a right to fight. In this case the employers did elect to take to the economic contest. And so the situation in this case is that the union was doing precisely what the State law contemplates that you have to do in that situation. There is no question of the union's violation of the ultimate public policy.

Now, the economic background of this situation is that Starr County, Texas, according to the Census figures, is one of the poorest in the United States. The economic condition of this county and these farm workers is the lowest in Texas, substantially lower than our black population which God knows is low enough. The growers operate large farms, hundreds of acres, vast fields. We have pictures in here to show you. And by stipulation, it is developed that they haul in the agricultural workers by busloads from far distances. There is no such thing in this case as a congested traffic situation. Everything takes place on the open road or out in the woods. And it is in that context that this Court is going to have to evaluate the application of the 50-foot law by the State of

Texas.

We have brought cases here where the Texas Rangers went out during the harvesting season in May, and they had three pickets out in the woods on the side of the field who were calling to the workers to come out. Those three were arrested for mass picketing; there was more than two. Then there were ten other Mexican-Americans under the shade of a tree on that hot day, and the evidence shows that the Ranger captain says, "Run them in, too, for mass picketing."

QUESTION: Am I right, the three-judge court here did not hold these several statutes unconstitutional. Unconstitutional as applied, but facially unconstitutional, did it?

MR. DIXIE: Facially unconstitutional is what I understand that they held.

QUESTION: You are defending that holding?

MR. DIXIE: Yes, indeed. Yes, indeed.

QUESTION: Then we don't have any occasion to look at these statutes in the context, as you say, as applied, do we?

MR. DIXIE: Well, it seems to me, and I believe that the Chief Justice has written in one opinion that I took careful note of, that one of the ways you can come to the conclusion of overbreadth most easily is if its validated by the actual application of the statute to constitutionally protect --

QUESTION: Then your answer to me is you are

defending the judgment both that facially the statutes are unconstitutional and if you are wrong about that, nevertheless, we ought to find that as applied, they are unconstitutional.

MR. DIXIE: That is correct.

Now, then, this 50-foot statute, you have got no traffic problem. They apply it without reference to obstruction, and they say that in every situation two every 50 feet is enough.

Now, let's look at the position of the union and the members in this case. They are trying to induce hundreds of farm workers to join them, and the State wants to have two pathetic-looking pickets out there in an economic contest where economic power is going to settle the issue, and the State says that that's constitutionally sufficient.

Why, any politician knows that when you have a rally and you have a good attendance, that makes you look like a winner and encourages people to support you and join with you and believe in your cause. The whole purpose of this statute -- not the whole purpose, but the whole defect of this statute, is to make the union look pathetic in a state-mandated economic contest where they violate no public policy when they are trying to get the others to join them.

QUESTION: You mean that's the consequences when applied to this situation because of the large area involved. Would you say that would be true on a factory in Houston or

Dallas located on one city block?

MR. DIXIE: The number of pickets would depend upon the situation. That is what this Court has said many times. The physical surroundings --

QUESTION: The two factual settings are quite distinct in this respect, aren't they?

MR. DIXIE: That's right.

QUESTION: A thousand-acre farm as against a city block factory.

MR. DIXIE: That is correct. But you can also have a factory with 3,000 workers. We have such factories in Texas. Why require two pickets?

Incidentally, this statute prohibits observers, people who come there to see how their welfare is being handled. And if they are across the street standing in a group and not blocking anybody, they are guilty of mass picketing, because there are more than two every 50 feet, your Honor, and because they are there to observe.

QUESTION: That's the distance from the factory or the plant under this statute?

MR. DIXIE: It makes no difference.

QUESTION: Fifty feet, isn't it?

MR. DIXIE: No, no. It makes no difference. You can be 300 feet away, but if you are there to observe or to induce people and you stand closer together than two every

50 feet, you violate the statutes.

That's an unbelievable statute, but that's what it does. It violates the statute to be that far away. And it has been so applied.

Now, I am afraid my time is getting away from me here.

One of the interesting features of this case is --

QUESTION: I know your time is running, but this is a massive case --

MR. DIXIE: It is a massive case.

QUESTION: -- that is dumped in our laps. If we were to disagree with the three-judge court as to some or all of the statutes, as to their facial, the holding that they are facially unconstitutional, are you suggesting that we ought then to examine this enormous record and decide for ourselves whether, as applied, they are also unconstitutional? Or should we remand this to the lower three-judge court to do it?

MR. DIXIE: Well, it would certainly be a shame to remand this case after all this many years of litigation where we are not asking for anything except our constitutional rights.

QUESTION: Give some consideration that we have other things to do, too.

MR. DIXIE: I believe the fact findings are adequate

to take you, your Honor, past the question of examining the record. They are all in the fact findings. All you have to do is line up the dates and see how --

QUESTION: Aren't you overlooking the central thrust of Justice Brennan's question that the holding of the three-judge court was the statute is void on its face, and if we should say that's not so, then how could we sort out which of these acts -- isn't the district court in a much better position to do that?

MR. DIXIE: Well, that's a question of your judgment in judicial administration, and you might wish to remand the case in that situation.

However, the facial unconstitutionality of these statutes, other than the 50-foot statute seems to me to be well demonstrated by practically white horse cases from this Court, several of them within the last few terms, and participated in by the present personnel of the Court. I see no occasion to really seriously believe that the statutes are not facially unconstitutional.

QUESTION: I am right that only 784 was held to be facially constitutional, wasn't it?

MR. DIXIE: That's another obstruction statute.

QUESTION: Well, that was held to be constitutional.

MR. DIXIE: And it was.

QUESTION: And what we have is the picketing statute

and the bad words statute.

MR. DIXIE: And unlawful assembly statute.

QUESTION: And secondary boycott.

MR. DIXIE: That's right.

QUESTION: Four that were held to be facially unconstitutional.

MR. DIXIE: That's right.

QUESTION: And only the fifth, the obstruction statute, held to be facially constitutional.

MR. DIXIE: That is correct. And then the disturbing-the-peace statute was held unconstitutional and they didn't appeal on that one. That was also held by another three-judge court, and the legislature has since amended that statute.

QUESTION: That's the one we had here in the gun case, wasn't it?

MR. DIXIE: Yes.

QUESTION: 474.

MR. DIXIE: Yes, the disturbing-the-peace statute. Right.

I might say --

QUESTION: You make the point in your brief that the action of the court below does not prevent any state authorities, other than the specific ten peace officers involved here, from enforcing these statutes against any other

people in the State of Texas.

MR. DIXIE: That's right.

QUESTION: How could that be so if these are unconstitutional, if they have been held unconstitutional?

MR. DIXIE: Well, we took to heart what you said in Younger v. Harris one of the important considerations is to exercise as much comity for the State processes as is consistent with the protection of First Amendment rights. We've come forward with something that I hope is innovative in this case. We leave the door open for legitimate prosecution and clarification of the statutes to make them constitutional while at the same time obtaining the necessary relief here to keep the First Amendment alive and start ... It's a question of trying to conform to your Younger v. Harris teachings.

QUESTION: If it's unconstitutional facially as to ten people, why isn't it unconstitutional for everybody in Texas?

MR. DIXIE: Well, that gets us to another question, if the Chief Justice please. No one in Texas has been arrested under the mass picketing statute on the criminal side of the docket since that statute was passed in 1947, just these farm workers. In fact, I have been practicing at the Texas bar 35 years, and I have never known before this case one person arrested for peaceful picketing. They have injunction cases to regulate the picketing, and even injunction to stop all

picketing which might be illegal. But it was reserved for these Latin Americans to face jail, six months in jail. We make quite a point of the tricky ways in which the complaints were drawn, the statutes were invoked, in order to terrorize the people.

QUESTION: Mr. Dixie, I understood the Chief Justice asked you if it's facially unconstitutional, you can't apply it to anyone in the State of Texas, regardless of the aggravated circumstances which might attend its application to your clients. Isn't that a correct statement?

MR. DIXIE: That is a correct statement, but it's still open to the State courts to construe these statutes with plastic surgery or something in ways that would bring them within constitutional standards, and the door is open for that.

QUESTION: ... a statute after this Court, if this Court agreed with the three-judge court, then they are wiped off the books, aren't they? Is there anything left for the State courts to construe?

MR.DIXIE: Well, I never have understood, let us say, that a declaratory judgment would be res judicata as to the interpretation that a state court is going to give to a state statute. You can declare a statute unconstitutional on its face, and the way I understand it, the state court could read your decision and come back later with a decision and

say their Honors in Washington were mistaken about the interpretation of this case, that we construe it thus and so, and if they construe it in the constitutional way, that is it. You are probably looking at a judicial declaration by this Court as a repeal. It might be that. I never have looked at it that way.

QUESTION: At least not on overbreadth.

MR. DIXIE: That's right. And I see my light is on here. I think that there is an important area for the legislature and these state courts to deal with these overbreadth problems, and even with these vagueness problems. And this is one place where it seems to me that they have been a little slow in catching on in the First Amendment area.

Your Honor wrote an opinion recently in which you said that the facial unconstitutionality declaration is strong medicine. Well, that's true, but in another respect, it's not strong medicine if the legislature will just sit down and amend the law as a noncontroversial problems to tidy it up First Amendment-wise so that it cannot be misused as it has been misused in this case. And I was thinking that perhaps this Court -- I hope it's not an improper suggestion -- ought to consider saying so to the States, because they are a little bit slow on the uptake. This Court should tell them. They have a duty to enforce the Constitution just like you do. They shoudl respond to your decisions.

Well, I haven't been able within my time to cover the facts, and so I respectfully refer you to the brief. I will use the rest of my time to say this to you, your Honors. The facts in this case are so bad from the standpoint of official lawlessness that this case calls for something to be said by this Court to disabuse the minds of peace officers that this kind of conduct is tolerable. I respectfully say to you, that your efforts up on the bench and our efforts down here in the pit to encourage respect for law and order are going to fail, they are going to be futile if this kind of conduct by peace officers is allowed to go unremedied in the Federal court.

QUESTION: You just stand on the findings of fact of the district court which are not challenged here. Isn't that your position?

MR. DIXIE: Yes. And, as I say, the severity of the facts. It lasted for a year, and the beatings were unspeakable and the terrorism was unspeakable. I will tell you frankly I hated to go down there to try that case from my home town of Houston where we think we are a little bit more civilized. But it was a duty, and we have carried it all this way, and we ask this Court to do what's right to let these law officers know that the Supreme Court does not tolerate this type of conduct.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Dixie.

Mr. York, you have about four minutes left. Do you have anything further?

REBUTTAL ORGAL ARGUMENT OF LARRY F. YORK

ON BEHALF OF THE APPELLANTS

MR. YORK: Yes, your Honor, I would like just a few moments.

I would like to say in answer to Justice Rehnquist's question earlier and Mr. Justice Blackmun's question, that we find no indication that any of the named plaintiffs were ever charged with violation under 483. The United Farm Workers v. La Casita was affirmed by the Texas Court of Civil Appeals.

I would also like to suggest to the Court that the preamble that we discussed earlier in my remarks is not, I don't believe, in the briefs unless it appears -- the preamble to 54d. It does appear in the official reported version of the Texas statutes and is available there for the Court, but I am not certain it's available in the briefs themselves.

We believe that there has to be a showing of a general pattern for each particular statute before the kind of Federal court intervention talked of here is proper. We don't believe that a pattern which just talks generally of what happened under a lot of statutes is sufficient. For instance, under 54d, the 50-foot and the obstruction statute, the evidence is that there were only about 25 arrests for that in the period spoken of by Mr. Dixie when the Rangers were

there after May 11. The first thing that Captain Allee did as shown in Mr. Dixie's brief was to go out and tell the people to get 50 feet apart, which they did. A week later he came back and they were not 50 feet apart. They were bunched up in a bunch and arrests were made. Arrests were made on a couple of other occasions under circumstances which were clearly violative of the Texas Act. There is no statement made in the briefs and in the record that there was any violence that I am aware of that was attached to those arrests under 54d. And we say that there can't be an injunction whether the statutes be held constitutional under the theory of saying perhaps that they might be enjoined because there was a bad faith prosecution with no reasonable hope of conviction. That's clearly not the case here. These statutes are facially valid, particularly as we have discussed 54d in some detail with the Court. We ask the Court to so find it, and to so find it facially valid.

QUESTION: Do you agree that we take the facts as found by the district court here since the State of Texas hasn't challenged the fact finding?

MR. YORK: Your Honor, we don't agree with all of some of what we might call editorializing, but as far as the findings of fact themselves, they were largely undisputed. And we have no particular quarrel with the facts. We may disagree with some of the conclusions or statements made by

the court about what the facts show, that is, their conclusions more or less from undisputed facts. But as far as their conclusions about what the facts themselves were, we have no particular disagreement with that and have not urged it upon this Court.

QUESTION: What is it you do challenge? There is an explicit finding of conduct that was in bad faith and harassing.

MR. YORK: Well, that's the part of it that we do challenge in the sense we are talking about the conclusions that they --

QUESTION: You say they don't lead up to that.

MR. YORK: Yes, sir.

QUESTION: What should be the standard of review for us to apply? We haven't done this before.

MR. YORK: The standard of review as far as --

QUESTION: The findings of harassment and bad faith. You say you don't challenge the historical facts. You say the historical facts as found don't add up to harassment and bad faith. Now, what standard of review should we apply?

MR. YORK: I think in that area there is not a clearly erroneous standard in the sense of findings of fact, but it's an area of simply discussing the case isn't trying to determine whether under the cases these particular facts --

QUESTION: Are you suggesting to me that's a question of law?

MR. YORK: I believe it is. I think the bad faith aspect of it in that sense is a law question, , your Honor.

QUESTION: Bad faith isn't usually a law question, is it? Harassment, is that a --

MR. YORK: Well, as a conclusion from these facts what is sufficient under the Younger cases.

QUESTION: You mean it's like negligence or it's like --

MR. YORK: Well, it's at best a mixed bag, a mixed law and fact question.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon, at 11:42 a.m., the oral argument in the above-entitled matter was concluded.)