

CASE REVIEW

[Delores Huerta, et al. v City and County of San Francisco, et al. Case No. C89-3390 JPV.](#)

Delores Huerta was the Vice President of the United Farm Workers Union when George Bush — campaigning in California, made sarcastic criticisms of the efforts of the union to improve the working conditions and pay of farm workers. Delores prepared a press release in response, and drove to the St. Francis Hotel where Bush was to speak that evening. While she was on the hotel steps being interviewed by news reporters, San Francisco police, in full riot gear, undertook to clear the sidewalk in front of the St. Francis Hotel. Members of the tactical squad lined the curb shoulder to shoulder. Then other members of the tactical squad moved down the sidewalk using 36 inch batons to push demonstrators, shoppers and tourists ahead. Those immediately in front were forced to push back against those behind. As the line moved past the steps of the hotel, officers went up the steps and forced those there down into the crowd on the sidewalk. Delores was repeatedly struck on her shoulders, arms and back, and the end of one baton struck her hard in her low back, rupturing her spleen, causing internal bleeding. When taken to the San Francisco Hospital she was close to death and only immediate surgery saved her life.

When retained by Delores, Art filed an action under 42 USC Section 1983, alleging that her rights under the First and Fourth Amendments were violated by excessive force used by the police. In such a 1983 claim, plaintiff, in order to win, must prove, not only misconduct, but that such conduct was in accord with municipal policy or with well-established municipal practice.

Art with his team located every possible witness known to be at the scene, and, after filing the action, took over 30 depositions, mostly of members of the police department. Through pretrial discovery, they obtained nearly 10,000 documents in their search for patterns of misconduct, lack of appropriate training, and willful failure to discipline.

It was found that only 1% of over 10,000 police misconduct complaints by citizens in the prior 10 years, resulted in any disciplinary action, and that only 4% of the police force were responsible for 40% of the complaints of police misconduct. Additionally, they found that documents that showed that offending officers were often continued to be promoted and were even permitted to train recruits.

To win for Delores, solid evidence of precisely what happened at the scene and that she had been struck and seriously injured by a baton wielded by a police officer was needed. Under California law, critical segments of news videos that had been taken, but had not been broadcast, were not available to plaintiff because such outtakes could not be subpoenaed.

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Fortunately, the City of San Francisco overreacted, and sought to show the public that it had done no wrong. The City represented that it had obtained all video tapes taken at the demonstration, had them reviewed by experts, and they found no misconduct by the officers. Through pretrial discovery, Art obtained from the City all of those videos the City had reviewed. When examined frame by frame, they found that the police had either edited the video tapes, or had not obtained all of those that had been taken. Since they could not obtain the outtakes by subpoena, they appealed to the sense of justice of those responsible for local television news. Art argued that if the station had furnished all videos taken at the scene to the City, as represented by the City, that in fairness plaintiff should be able to see those same videos. Finally, the station that had the key videos, made an exception from its policy, and provided from its video library, the outtakes. Those revealed that before Delores was struck by a baton she was asking to be released from the police lines and pointed out that she had no way to retreat. The outtakes showed that the officer that struck her did not strike only two blows, but in fact struck eight powerful blows in rapid succession, clearly misconduct.

With this evidence, the City chose to negotiate, but Delores Huerta insisted that there could be no settlement until critical reform was achieved. John Jordan, Commander of the Tactical Division and Frank Jordan, the Chief of Police resigned from the force. A new order, General Order F-5, was issued reaffirming that “a primary mission of police action at events that involve free speech activities should be to protect and respect First Amendment Rights to freedom of expression and assembly.” A comprehensive rewriting of the police Crowd Control Manual was adopted and provided to all officers. Those materials stated that “the Commissioner and the Chief of Police will not tolerate violations of the Crowd Control Policy” and that any violation “will subject the offending members to disciplinary action which may include suspension or termination.” The hiring process was also overhauled. With confirmation of these reforms, Delores agreed to a settlement, which paid her medical expenses, her lost income, compensation for pain and suffering and monthly payments for the rest of her life. It was reportedly a record settlement for the City of San Francisco.