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Case Debate:
*The Long Struggle Towards Environmental Justice
For Central American Banana Workers¹*

Abstract

The people of Central America and the banana industry are linked not only by century-old economic ties but also through a shared history of environmental injustice. The entire region is dependent on their agricultural exports, and banana production makes up a large part of that sector. While the US-based banana companies benefit from the success of their operations in Central America, the rights of workers there are often disregarded. For decades workers from various Central American countries have mobilized through collective action and filed formal lawsuits claiming that the large corporations they work for harmfully exposed them to the chemical known as DBCP through the 1980s before it was banned in their respective countries. Despite the lengthy court battles they have had to endure, most workers have been left uncompensated and unprotected (Ziemba 2011, 1).

The legal battle of this case focuses on the complaints of several Nicaraguan banana workers against the Dole Food Company. However, thousands of other cases pitting workers in other Central American countries such as Costa Rica, Honduras, and Guatemala against the other major banana vendors, Chiquita and Del Monte have been filed as well. Although this case discusses only the Dole case, the themes can be applied to the much broader conflict between foreign workers and the U.S. corporations for whom they work. It asks students to consider how difficult it is to legally prove a case of injustice and who is responsible for remedying the situation when so many complicated variables are involved.

Background Information

The Creation of the “Banana Republic” in Central America

Though there are thousands of varieties of naturally occurring bananas, only one specific type is sold around the world, marketed as that perfect yellow banana that we see in our grocery stores. For the past two centuries, major corporations have worked to create the monoculture of this one particular crop in developing countries around the world, such as Africa, the Philippines, and most notably Central America. Today, bananas rank “the fourth most valuable food crop in terms of gross value of production” behind rice, wheat, and corn (Rosencranz, Roblin, and Balloffet 2009, 163). “The company involved in this particular case, Dole, controls 25% of the world market in the banana industry while its two main competitors Chiquita (formerly United Fruit Company) and Del Monte own 25% and 15% respectively” (Ziemba 2011, 3). Controlling the production of a large amount of an important crop, it is clear that these companies have a tremendous amount of power both in the world market and in the countries in which the plantations are located.

When the United Fruit Company came to Honduras in the late 19th century they cleared tropical jungles and farms and created a “banana republic,” one that was beneficial to all parties,

¹ This case debate is derived from a previous paper of mine with the same name submitted on March, 3, 2011 for Sociology 221 at Vanderbilt University.

at least initially. One former worker, Inez McNabb explains, “Bananas provided riches for the community.” She elaborates on her definition of riches; everyone had a loaf of bread. The company controlled literally everything in the community that McNabb lived in; they owned the homes, the dishes, the linens, branding everything with the United Fruit Company logo. While the whites owners, who lived in a separate, gated area of town, became truly rich, the workers earned low wages for their backbreaking work. But still, they were employed and had a means to support their family. Afraid of losing their jobs, they seldom spoke out against the injustices they felt they faced. When they did, they were met with powerful resistance. In the 1950s when a disease infecting the banana crop struck, the company simply picked up and left for a new town, its workers completely expendable, just as they feared. The company took everything with them, leaving the town virtually empty, without housing, hospital equipment, or any industry to support itself with (Harpelle and Saxberg 2002). This vicious cycle of dependency and injustice that exist in the relationship between large companies and their workers is demonstrated in the following poem:

“United Fruit Company” by Pablo Neruda (1950)

When the trumpet sounded
everything was prepared on earth,
and Jehovah gave the world
to Coca-Cola Inc., Anaconda,
Ford Motors, and other corporations.
The United Fruit Company
reserved for itself the most juicy piece,
the central coast of my world,
the delicate waist of America.

It rebaptized these countries
Banana Republics,
and over the sleeping dead,
over the unquiet heroes
who won greatness,
liberty, and banners,
it established an opera buffa:
it abolished free will,
gave out imperial crowns,
encouraged envy,
attracted the dictatorship of flies:
Trujillo flies, Tachos flies
Carias flies, Martinez flies,
Ubico flies, flies sticky with
submissive blood and marmalade,
drunken flies that buzz
over the tombs of the people,
circus flies, wise flies
expert at tyranny.

With the bloodthirsty flies
came the Fruit Company,
amassed coffee and fruit
in ships which put to sea like
overloaded trays with the treasures
from our sunken lands.

Meanwhile the Indians fall
into the sugared depths of the
harbors and are buried in the
morning mists; a corpse rolls,
a thing without name,
a discarded number,
a bunch of rotten fruit
thrown on the garbage heap (UCSB).

1,2-Dibromo-3-chloropropane (DBCP) Facts

For years, the rest of the world was largely unaware or unconcerned with the rights of these Central American workers. However, “The mass-sterilization of banana plantation workers in five producing countries,” including Nicaragua, “by one pesticide became a cause célèbre among labor and environmental activists. The chemical responsible, DBCP, was applied from the 1960s through the early 1980s” (Marquardt 2001, 79). “Beginning in 1955, the chemical 1,2-Dibromo-3-chloropropane (DBCP), which is marketed as Nemagon or Fumazone, was sold by Shell Chemicals and Dow Chemical in many regions of the world. The chemical successfully killed worms that harm the roots of the banana plant, causing a boom in the banana industry. However, the possible harmful effects from exposure to DBCP are numerous; The National Institutes of Health consider DBCP to be ‘toxic, carcinogenic, and mutagenic’ (Rosencranz et al. 2009, 165)” (Ziemba 2011, 4). Allegedly, the chemical companies that sold the pesticide knew of these side effects since they put it on the market. The public was not made aware of these effects until 1977 when American workers in California working to manufacture the chemical at Dow sued the company. In 1979, when the 60 Californian workers found to be sterile won the case against Dow Chemical, the EPA banned its use in the United States (DBCP Hazard Summary 2010). Allegedly, after being banned from the U.S. the chemical was still used on foreign banana plantations through the mid 1980s (Gonzalez and Loewenberg 2003, 1). The link between cancer and exposure to this chemical is largely recognized today; every year since 1987, under the Safe Drinking Water and Toxic Enforcement Act of 1986, DBCP has been on a list of chemicals associated with cancer (State of California).

Case Setting

It is 2010 and the case of *Jose Adolfo Tellez vs. Dole Food Company* is being debated in a Los Angeles court, addressing the concerns of several Nicaraguan workers who allege that they were exposed to DBCP in the 1970s. One of the lawyers representing the workers, Duane Miller, who also helped win the 1977 case involving Californian workers, argued that “Dole Food. Co. knowingly exposed Nicaraguan banana workers three decades ago to a pesticide made

by Dow Chemical Co. that caused permanent sterility” (Miller 2 2007). Since the 1980s more than 300,000 lawsuits have been filed by banana workers in Latin America, Africa, and the Philippines seeking damages for exposure to DBCP. Only a few of these have resulted in any compensation and none have been settled in court to set any sort of precedent for future hearings (Miller 1 2007). This represents the first time that Dole will actually defend itself in an American court against these allegations. Thus, the case has received a great deal of national media attention. What was predicted to take two and a half months, when the original trial began in 2007, has taken years. In 2007, a verdict was reached; “The jurors found that DBCP was harmful and that Dole actively concealed the danger from the plantation workers” who were offered a combined settlement of \$3.3 million. That amount was eventually reduced to \$1.58 million and Dole was granted the opportunity to re-try the case at a later date (Rosencranz et al. 2009, 170). That later date has arrived.

The plaintiffs, workers from Nicaragua, are present in the courtroom, as well as defendants from Dole Food Company. Due to the amount of attention the case has attracted, media outlets also have been seeking out the opinions of others indirectly tied to the case. The opinion of the American consumer has been taken into account by Dole in defense of their practices while the prosecution has called upon U.S. and Nicaraguan officials and legal experts to address the legal battles that have occurred up until this point. These members are also present in the forum for this debate. It is necessary of course to look at the specifics of this case and determine if the workers deserve compensation or if their claims are not strong enough. However, a winning verdict for these few banana workers will have much greater implications. This trial could act as a precedent for the thousands of other court cases involving Central American workers and the U.S. banana corporations waiting to be tried. If the case is tried and won in a U.S. court it opens up the possibility for complaints from workers in unrelated industries abroad seeking claims against U.S. corporations in the future.

This case seeks to discuss the issue of who is responsible for litigating a case of alleged environmental injustice when the plaintiffs are foreign citizens, the wrongdoing occurred both in the U.S. and abroad, and the defendants are U.S. businesses. Should the trial be tried in the country in question, Nicaragua in this case, or here in the United States? If the parties involved decide the case does warrant a completion of a U.S. trial, what should the verdict of this particular case be? Is it possible to reach an agreement to appease the various groups? What greater implications on the field of environmental justice would either verdict have on the many people involved?

Participants in the Debate

North American Consumer

North American consumers love bananas, and yet what do they really know about their beloved fruit? When a documentary crew went up to a woman shopping in a grocery store in Canada and asked her if she knew where bananas came from she replied, “From a tree? I don’t really care.” There are of course some conscious individuals who purchase food knowing where it came from, but the vast majority of consumers in the developed world have no idea about the origins or production conditions of their food and other products (Harpelle and Saxberg 2002).

More stringent regulations or money spent on these lengthy legal battles will cost the companies money that they will have to earn elsewhere. The companies are not going to settle for a lower profit but rather the American consumer will end up paying more money for the same quality product. During an economic recession, American families do not have the means to

spend even more money on food. It would be particularly harmful to raise the price of a healthy option such as the banana, which might turn American consumers to less healthy, less costly choices. These large corporations such as Dole are not the only producers of bananas; smaller corporations exist that market organic or locally grown foods. The segment of the American population that is concerned with where their food is coming from has the option to pay a higher price for items if they feel strongly enough about it and are able to, while others who do not have the means to do so should be able to shop more affordably.

Nicaraguan Banana Workers

As of 2005, 80% of Nicaraguans were living on less than \$2 a day (Population Reference Bureau 2005). Individual citizens in Nicaragua and surrounding countries have very little power or voice to express their concerns, experiences, and knowledge with the rest of the world. As a result, they take whatever work they can find in order to survive.

Though all work on plantations is difficult, the application of pesticides on crops is “considered one of the least desirable tasks and in general fell to the most marginalized workers, who were often poorly educated, illiterate, and indigenous” (Rosencranz et al. 2009, 166). Day in and day out workers were exposed to these harmful chemicals. Worker Manuel Guido remembers his time working on the banana plantation; He says, “We breathed in the vapors,” and as a result “I’d get headaches, a bloody nose, stomachaches. You put up with a lot of pain.”

Mr. Guido believes that he is unable to have children as a result of the exposure to DBCP he faced in the 1970s. His friends, neighbors, and coworkers suffer from similar health problems. If they are able to have children, many “have children born ill or with birth defects—stigmas in society where large families are not only expected but also necessary for economic survival” (Gonzalez and Loewenberg 2003, 3). Similarly, Jose Adolfo Tellez, the lead plaintiff in this specific hearing, works hard all day and at night returns to his small, cinderblock home to care for his 80 year-old mother; the two live alone. Tellez, whose wife left him when he was unable to have children, blames DBCP for their predicament. “In the macho culture of rural Nicaragua, children are,” not only a practical necessity but also, “a measure of wealth and power. Tellez had neither. He was labeled a *buey* – slang for a castrated bull. ‘It demoralized me,’ he said. ‘I felt like a useless man’ (Miller 1 2007). Thus, not only are the personal lives and emotional well being of these two men, and countless others, damaged by the inability to have children, but his family faces economic struggles. In Latin American communities multiple generations typically live with or nearby to one another and support each other. DBCP, they argue, has left nobody to pitch in to the family income or care for affected workers as they age.

The plaintiff’s lawyers argue that the exposure that workers faced was avoidable. A Nicaraguan lawyer, Antonio Hernandez claims that Dow conducted studies as early as 1960 that indicated the potentially dangerous effects of the chemical (Han et al. 2008). Though the companies were aware of potential risks, workers argue they had no idea about the side effects they might face when they accepted jobs on these plantations. They claim they were “not given appropriate equipment and training in order to minimize exposure” (Rosencranz et al. 2009, 166). They claim “they were never told that DBCP was harmful, adding that any warning labels on the chemical drums were useless, since they do not read English” (Gonzalez and Loewenberg 2003, 3). Representatives from the *Asociacion de Obreros Afectados por Nemagon* (Association of Workers Affected by Nemagon) have made even more direct attacks on the companies; they insist that the companies buried the containers the chemical came in in order to keep its use in Central America quiet. Whether or not such measures were taken, it seems clear that many

workers were never given adequate protection when handling these chemicals. They seek monetary compensation to make up for the economic loss and emotional distress they have dealt with.

Dole Representative

Dow Chemical, the company that manufactured DBCP in the 1970s says their product was always labeled with “appropriate safety precautions” and do not take any responsibility, saying that it is possible that the companies who used their chemicals, such as Dole, may not have properly explained these warnings. Dole has maintained that any exposure workers might have received was not high enough to cause harm and insists the manufacturers tested the safety of DBCP before ever reaching workers (Gonzalez and Loewenberg 2003, 2). Though Dow does admit responsibility for the alleged link between infertility and the use of their chemical in the manufacturing plant, and both Dow and Dole admit the product was used in Nicaragua, Dole maintains that the quantities used, mixed with open-air conditions of the plantations, were not enough to harm workers. In several cases that have been brought against them in the past, Dole has been able to prove “that supposedly infertile men fathered children. The companies have also discovered plaintiffs who did not work on farms that used DBCP” (Miller 1 2007). They are using this proof of some instances of falsified evidence to discount the validity of all claims.

C. Michael Carter, Dole’s Vice President and General Council, maintains that Dole believes “there is no reliable scientific basis for alleged injuries from the agricultural field application of DBCP.” However, “Dole continues to seek reasonable resolution of pending litigation and claims in the U.S. and Latin America,” and they are planning to pursue a “structured worker program in Nicaragua with science-based criteria” (DBCP Facts). They maintain that any suits they have settled out of court on behalf of workers does not imply they admit responsibility but rather, Carter says, “We don’t want to spend our lives forever dealing with this, so the company has adopted an approach to find a reasonable resolution to these pending claims,” and is trying to work with their former employees (Miller 1 2007).

Furthermore, even if workers were put in theoretically unsafe conditions, Dole insists that “today’s Dole” should not be held responsible for what the “old Dole” did decades ago. None of the leaders that worked at Dole in the 1970s are still with the company today and thus they do not feel it is appropriate for the company to pay for the mistakes of their former employees. Today, Dole claims they “set high standards for the Company that go beyond what the law requires. Our people are our greatest asset and their safety and well being our highest priority” (DBCP Facts). According to Dole, the company that existed thirty years ago that these workers are attempting to sue is, in a sense, no longer in existence.

Additionally, one of Dole’s major concerns in this legal battle is their public image that their consumers have of them. They have worked very hard to keep the American public up-to-date, both on their company website and in publications, as the legal battle wages on, signaling every time they are successful and refuting claims the other side makes. A successful lawsuit against them could tarnish the reputation they desire, as expressed in their above pledge to human rights. A boycott of their product could benefit their competitors and cause a decrease in profit for the company making it more difficult to implement the promises they have made on the issue of worker safety and adequate compensation. Any economic loss they experience as a result of these trials might also impact the American consumer’s ability to afford their products.

Nicaraguan Legal Representative

Under the Somoza dictatorship in the 1970s there was no government protection for the rights or safety of the country's workers or environment. When the Sandinistas gained power, during the 1980s Nicaragua made major strides towards pesticide management and education. The Agrarian Reform Ministry (MIDINRA) was set up to conduct tests on the quality of products entering the country as well as work to better understand the effects of their use on farms. Along with their own science, the organization consulted data on pesticides from the U.S. EPA. In the 1980s "MIDINRA enforced laws prohibiting the import of several pesticides, such as the hazardous nematicide DBCP," which was "supposedly banned in the 1970s yet continued to be available because of lack of law enforcement" in Nicaragua, or consideration from the U.S. companies that manufactured the product. Additionally, the organization created the Department of Worker Security under which they conducted classes stressing pesticide safety in the workplace and took precautions against exposure to harmful chemicals. They trained officials to monitor workers exposed to pesticides to further understand pesticide related illnesses (Thrupp 1988, 56). As best they can, with the limited resources they have, the Nicaraguan government and organizations have been trying to protect the safety of both their citizens and their industries.

This work, however, did not go far enough. On one occasion thousands of Nicaraguan workers and labor union officials marched to the capital city Managua seeking compensation for "the negligent practices of transnational corporations" involving exposure to DBCP years earlier. Nicaraguan and other Central American courts tried to file suits in the United States but were told, "cases should be litigated in the workers' home countries," where the workers can receive the impartial trials they deserve (Rosencraz et al. 2009, 166-167). Unfortunately, many argue that the legal system in Nicaragua was simply not equipped to handle the magnitude of complaints being filed with their courts and did not have the resources necessary to fight against such powerful corporations. Latin American Law professor at Columbia University, Alejandro Garro, insists that these nations "have 19th-century legal structures and have no system in place to deal with extremely technical class-action cases involving thousands of workers" (Gonzalez and Loewenberg 2003, 2).

Without support from U.S. courts, however, the Nicaraguan courts tried to handle the complaints they received. Responding to the needs of their citizens, in 2000 Nicaraguan courts passed the "Special Law for the Conduct of Lawsuits Filed by Persons Affected by the Use of Pesticides Manufactured with a DBCP Base" (Special Law 364). This law presumed that the link between DBCP and the illnesses reported were hard fact and thus forced defendants to pay high damages to those who filed suits with reasonable proof (Crook 2010, 105). In 2002, a ruling in Managua "ordered Shell, Dole, and Dow to pay \$489.4 million to 450 workers" (Gonzalez and Loewenberg 2003, 2). Again in 2005 a court in Chinandega, Nicaragua rendered the same verdict of liability with a lower judgment of \$97 million against these corporations. Both of these decisions, as well as others made by Nicaraguan courts, have been re-tried in the United States and eventually dismissed. The companies refuse to recognize "the judgment and the authority of the court in Nicaragua" (Rosencranz et al. 2009, 167). They cited that Nicaraguan courts did not have jurisdiction to make claims against U.S. based corporations and the ruling "offends virtually every notion Americans have of fair play and substantial justice" (Gonzalez and Loewenberg 2003, 2). Thus, the Nicaraguan courts have received many mixed messages from the United States over who has the jurisdiction to make these decisions. Despite their attempts at solving this problem they have been at the mercy of the American legal system, which has impeded their ability to affectively act.

American Legal Representative

Typically, when a corporation based in one country does work in another country it is subject to the laws of the state in which the work is done in. This legal precedent was set up before such a global economy existed. Today, it is easy for individuals from one country to conduct business in countries that have less strict laws and regulations to abide by. When workers in these countries are taken advantage of and seek compensation or support from the countries in which the offending corporations are based in, they are often met with resistance. Knowing that the courts in countries such as those in Central America are likely unable to present a convincing case against an American company, many courts have used the doctrine of *forum non conveniens* (FNC). In this case, for example, the banana and chemical companies would have the right to argue that “the court should defer the exercise of its jurisdiction because another forum is more appropriate” for a variety of reasons. What was originally a “minor procedural doctrine” is now an important legal tool that can be used to “bar litigation in the United States” in the interests of large, American corporations (Blumberg 2002, 501). Taking advantage of these “Jurisdictional and procedural issues have repeatedly impeded attempts to sue U.S. companies in the United States for alleged wrongdoing in other countries (Miller 1 2007).

Should this case be won, it would signal a change in American legal policy. “In the end, this issue may ultimately be decided by the extent to which courts throughout the United States respond to globalization with a readiness to reshape legal doctrine to the changing world” (Blumberg 2002, 526). As it stands, these corporations enjoy “a privileged situation when the lawsuit is re-filed in Latin America, pursuant to a FNC decision. Such defendant can disregard a condemnatory Latin American judgment by challenging its enforcement before a US court, where the assets are located. This is strange, considering that the case was transferred to Latin American at the defendant’s request.” The plaintiff then even after winning a case has to face a decision from the U.S. in order to enforce the verdict (Dahl 2003, 34). Though the grounds of each individual decision to move a trial from one jurisdiction from another are certainly legal, looking at the situation holistically, it is clear that unjust behavior is occurring behind the guise of the legal process and thus should be reevaluated.

Questions for Discussion

1. Who is responsible for dealing with this case, the Nicaraguan courts where the injustice was committed or in the U.S. where the companies are based?
2. Should the current Dole employees be held responsible for the injustice their predecessors committed? Should the Central American workers be penalized for taking so long to get their complaints heard due to the legal resistance they faced?
3. Who is responsible for protecting workers against risks associated with chemicals, the chemical company that produces them, the company who uses them in their business, or organizations in the country in which they are being used?
4. Looking at the speedy resolution that 1977 case of Dow Chemical workers involving California workers, do you think these cases would have taken so many years to be tried without real progress if they involved workers in the United States?
5. Should American corporations be held to the same environmental and safety standards that they comply with in the United States when they work abroad? What implications

would that have on the ability for that company to make a profit and thus the American and global economy?

6. Why do you think some Central American workers, or even their governments, hesitant to demand better protection from the corporations they work for?
7. Stepping out of your assigned roles and back into the real position you occupy, as an American consumer, would you be willing to pay more for the price of goods such as bananas if it meant ensuring that the working conditions where the items were manufactured were improved?

Afterward

The 2010 trial that this case explored reached a verdict later that year and was recently finalized in March 2011. Dole was able to convincingly argue that evidence in the trial had been falsified and thus an unfair guilty verdict had been reached in the 2007 hearing. The Judge Victoria Chaney declared, “There was a massive fraud perpetrated on this court” (US Judge Overturns 2010). The exact accusations are unclear, and although evidence may have been tampered with in this trial, the thousands of other cases that were awaiting trial must indicate some truth to the matter. A ruling on the side of Dole in this case will now make the already uphill legal battle for these Central American workers even more difficult. However, although this case has explored the complicated issues that all parties involved face, the future is not entirely bleak.

Earlier in the trial lawyer Duane Miller said that he believed a ruling in favor of the workers would make companies pay more attention to what they do “South of our [U.S.] border,” citing that “we were entering a new era of corporate accountability in which transnational corporations could not longer evade domestic and international laws” (Rosencranz et al. 2009, 177). A legal precedent set by this case certainly might have helped to address the basic human rights of workers globally, but one based on potentially unjust grounds would not have solved the problem. Though the workers do not have stringent legal protection yet, the media attention surrounding this case and thus the public relations expenditures that these companies have had to partake in may have helped to lead us a step in the right direction.

Dole Food Company issued a press release on April 27, 2011 announcing that Dole “is now selling bananas grown on Rainforest Alliance Certified farms in Costa Rica, Honduras, and Guatemala. The farms meet the Rainforest Alliance’s comprehensive environmental and social standards, protecting wildlife habitat and workers alike.” The exact specifications of what this means are not stated, they haven’t implemented these standards on all farms, and these bananas are not widely available yet, but they are offering this choice to consumers at Sam’s Clubs throughout the United States (Dole 2011). The lawsuits like the ones presented in this case have had such difficult time being addressed in the first place because of the power that large American corporations and their consumers who support them have over the American economy and thus the legal system. If consumers begin to take advantage of even small opportunities, such as purchasing these types of bananas, to use their voice to insist upon change from these corporations, slowly that change can occur. We do not all yield the power of Judge Chaney, but together each individual American can discuss the complex issues presented in this case and put down their gavel in favor of a more environmentally just world.

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