

## How UFW Picket Captain Lupe Murguia Changed California Law

By Elaine Elinson

When farmworker Lupe Murguia was hauled into court for the umpteenth time for picketing too close to the edge of a vineyard in the summer of 1973, he was not thinking about making legal history. His mind was on the grape growers' latest attempt to crush the United Farm Workers (UFW) union by signing sweetheart contracts with the Teamsters. The veteran organizer was also worried about the growers' court injunctions that kept UFW pickets far from the edge of the fields, so far that their voices could not be heard by the picking crews in the vineyards. The injunctions also limited their numbers, leaving isolated picketers vulnerable to attacks by the Teamsters hired thugs, especially in the pre-dawn darkness when the work crews began filing into the fields.

Kern County had long been a battle ground between agricultural union organizers and growers, who had allies in law enforcement. In the early 1900s, there were mass arrests of free-speech loving Wobblies (or Industrial Workers of the World -- IWW), filling rural jails to capacity. During the 1930s, a wave of strikes that swept through the Central Valley was met with armed vigilantes, often in the pay of the Associated Farmers, while law enforcement turned a blind eye. The Kern County Board of Supervisors banned *The Grapes of Wrath* from county libraries in 1939, because they did not like Steinbeck's sympathetic depiction of labor strife there.

Many thought the tide had turned when the nonviolent United Farm Workers succeeded in winning the first trade union contracts with grape growers in 1970. However, in 1973, the growers signed backdoor sweetheart contracts with the Teamsters union, and shouts of "Viva la Huelga" filled the dusty fields once again.

Every time the UFW set up picket lines, armed officers would be out in force to threaten, arrest, jail them, often using excessive force and hurling racial slurs at the Mexican and Filipino strikers. The arrests became so routine that officers brought empty school buses down to the fields to transport farmworkers to the county jail. But like the Wobblies before them, each time strikers were forced off the picket lines, more would come to take their place.

Some of the strike leaders were well known to the police, and they were arrested more than others. One of them was Lupe Murguia, a gentle, mustachioed farmworker, father of eight children, who had been with the union since the start of the first grape strike in 1965. As a veteran organizer, he served as a picket captain. Over the course of the spring and summer, he was arrested dozens of times, mostly for trespassing or violating the court-ordered injunction that kept him out of earshot of the work crews.

UFW attorneys Peter Haberfeld, Barbara Rhine, Miguel Garcia and others challenged the convictions of Murguia and five other union members for strike-related misdemeanors on the grounds that they had been unfairly singled out for prosecution. Kern County law enforcement authorities "engaged in a deliberate, systematic practice of discriminatory enforcement of the criminal law against UFW members and supporters," they charged. The case, *Murguia v. Superior Court*, [court records misspelled his name, so it is listed in all official files as Murgia] went all the way to the California Supreme Court.

On September 24, 1975, the high court ruled unanimously in favor of the farmworkers. Justice Matthew Tobriner wrote, “[I]f a particular defendant, unlike similarly situated individuals, suffers prosecution simply as the subject of invidious discrimination...[this] becomes a compelling ground for dismissal of the criminal charge, since the prosecution would not have been pursued except for the discriminatory designs of the prosecuting authorities.”

The court based its ruling on the 1886 U.S. Supreme Court ruling in *Yick Wo v. Hopkins*, which determined that a seemingly neutral San Francisco ordinance outlawing wooden laundries was targeted only and unfairly at Chinese laundrymen. Justice Tobriner stated, “Neither the federal nor state Constitution countenances the singling out of an invidiously selected class for special prosecutorial treatment whether that class consists of black or white, Jew or Catholic, Irishman or Japanese, United Farm Worker or Teamster.”

The UFW organizers were thrilled that their rights – which had been so brutally ignored in the vineyards and on the picket lines – had been vindicated in the state’s highest court.

The 1975 ruling was enshrined as the Murgia [sic] Motion, which states: A defendant may be entitled to a dismissal of criminal charges upon a showing of selective prosecution for improper purposes.

Criminal defense attorneys have used the Murgia Motion in a wide variety of innovative ways. San Francisco lawyer Doron Weinberg recalls a case he argued in 1976, defending a political radical who was charged with a felony for giving false information to the Department of Motor Vehicles to get a phony drivers license.

“No one ever heard of a full-blown perjury charge for having a phony driver’s license,” Weinberg laughed, so he invoked the Murgia Motion to see if his client was being punished for his political associations and beliefs, and the appellate court eventually granted it.

“Naturally, the DMV did not want to turn over stacks and stacks of records,” Weinberg recalled, so the case against his client dissolved. He cited another challenge where feminist activists used the law to expose the way prostitution charges were only being brought against women, while their male customers were let go.

Former San Francisco Bar Association President Nanci Clarence found the Murgia Motion useful to highlight selective criminal prosecution of gay men in the 1980s. The police sent decoys to a rest stop on Highway 280 that was a known gathering area for men looking to meet other men. Many of those arrested risked losing teaching credentials, professional licenses, families and jobs.

“The police entrapment was clearly discriminatory,” Clarence asserted. “The men were charged under a section of the penal code outlawing ‘lewd conduct,’ – but you didn’t see the same kind of police operation out at the Marina shining flashlights on heterosexual couples in cars.”

Clarence filed Murgia Motions to “elevate attention to the problem, and as a tool to curb excessive zeal on the part of law enforcement.”

James Brosnahan, who has defended many high profile clients including foes of the Marcos regime, church sanctuary activists and John Walker Lindh, believes that in today’s legal climate, the Murgia

Motion is not as widely used, in part because discrimination by police and prosecutors is not as acceptable and has “gone underground.” Yet the three seasoned defense attorneys all agree that the Murgia Motion is a valuable tool to uncover and illuminate bias in the criminal justice system.

The sacrifices of Lupe Murguia and other UFW strikers eventually led to union contracts and better working conditions for farmworkers. It also established a procedure that has been used to protect the rights of political radicals, women, and gay men far from the dusty Kern County fields. As Murguia’s UFW colleague Alberto Escalante colleague said, “This quiet, unassuming hero has helped bring about a law that will continue to protect the rights of those, who for whatever reasons, have been illegally singled out and arrested simply because they're recognizable, believed to be one of the leaders, or simply because the sheriff or policeman doesn't like who they are or who they think they are.”

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