Waiting behing the bars of a Mexican prison.
(Photo courtesy of Roberto Hernández and Layda Negrete.)

FILM

Presumed Guilty: Based on an Untrue Story

by Mary Ellen Sanger

"Andar por la calle ya no es confiable… ¿Cuántos inocentes seguirán cayendo?"
"On the streets it's not safe for us to walk… How many more innocents will fall?"
— Antonio Zúñiga Rodríguez

When Antonio "Toño" Zúñiga raps at the end of the new documentary "Presumed Guilty" that it's not safe to walk his streets in Mexico City, it's not for fear of pickpockets, kidnappers, gunshots or gangs.

"Ahora ya no queda cuidarse de la lacra; ahora hay que cuidarse de un oficial con placa."
"Now we're not so wary of the bad guys; now we're careful of the officer with a badge."

It's the police, he warns, who are making the streets unsafe. Zúñiga speaks from experience: he spent more than three years in a Mexico City prison for a murder he did not commit.

Two young Mexican lawyers have made it their mission to take on the system that incarcerates innocents like Zúñiga. Roberto Hernández and Layda Negrete, who call themselves "lawyers with cameras," are a married couple whose effervescent charm belies their serious purpose. As they work toward their doctorates in Public Policy at UC Berkeley, they advocate for the filming of criminal court proceedings in Mexico, believing that cameras can be a tool for bringing transparency to the courts.

Their first-of-its-kind filming of Zúñiga's case resulted in the chilling documentary, "Presumed Guilty," which presents in gripping detail the harsh reality of Mexico's trial system that is responsible for the almost-routine incarceration of innocent people. The film, directed by Hernández and award-winning documentary filmmaker Geoffrey Smith, made its world premier in September 2009 at the prestigious Toronto International Film Festival. It went on to win top recognition at the Morelia Film Fest and the Amnesty Award at the Copenhagen International Documentary Festival. The hair-raising footage of court proceedings seems artfully scripted for dramatic effect, but unfortunately it is all too real. At a recent public screening in Mexico, the crowd was up in arms, screaming at the judge on the screen, kicking the floor and gesturing angrily.

"We didn't actually realize we were making a film," Hernández says, "until we found out we could get a retrial for Toño."

Zúñiga was already in jail and sentenced to 20 years when Hernández and Negrete met him. On December 12, 2005, police officers grabbed Zúñiga off the street, handcuffed him and threw him in prison. His accuser was a minor who had previously been a suspect. "He's the one" and a point of the finger. That's all it took. Zúñiga and the young man who accused him had never met. There was no arrest warrant. No evidence. The witnesses who had seen him 20 minutes away from the crime scene at the time of the murder appeared as handwritten names in a file of written reports and testimonies four inches thick and sewn together with twine. Zúñiga's file was just one in a mountain of similar files in an archive room of the court. Nobody followed up. Why bother? He was already presumed guilty.

It's an all-too-common story in Mexico, where police are paid bonuses for the number of arrests they make. Though the right to a fair trial has long been constitutional, it is only since 2008 that "fair" has been defined specifically to include the presumption of innocence and an oral trial. Currently, trials are held with or without a judge present (usually without), with or without witnesses present (usually without) and with or without real evidence or an attorney for the defense. Sheaves of paper are pushed back and forth across desks for signatures and stamped in triplicate. Defendants are often convicted without ever seeing the judge who sentenced them. This assembly line operation only very narrowly fits any definition of justice, as clerks, prosecutors, secretaries and judges "just do their jobs" within a dehumanizing system.

Getting camera teams inside that system is no small feat. While Mexicans have a constitutional right to a public trial, in reality everything happens behind closed doors. Hernández and Negrete use the Constitution to negotiate access to trial proceedings. "This is a constitutional right, but there has been no precedent," Negrete explains. "In general, a trial is so difficult to understand that almost nobody is even interested. Of course, the media has been in hearings, and they show images of people facing a trial, but they've never assembled the whole trial."

Because the trials are so difficult to understand, even for lawyers like Negrete and Hernández, they found that cameras gave them the chance to better follow the proceedings.

"We get clarity from the cameras," Hernández says. "Without the cameras, you don't know who's who, what's what, what's the theory about the case, what are they trying to prove. There is no opening argument. You can't hear anything; you don't understand. It's clearer in the film. I only found out certain things had happened when I was checking the footage."

The film shows Zúñiga standing in a poorly lit area, face pressed up against the bars that separate and brand him, struggling to understand the convoluted proceedings. The high-pitched drone of ink-jet printers competes with the scraping of chairs on the tile floor and the echo of legal banter — each word repeated by the judge for proper recording by the secretary. Zúñiga's family and friends are present in the background, kept at bay by a four-foot wall.

While Zúñiga's trial seems impersonal, he actually receives better-than-average treatment because of the presence of cameras. Normally, he would be tried simultaneously with up to 12 other defendants. It wouldn't be "the Zúñiga trial," it would be the "criminal trial of the day." In front of the cameras, the judge — not generally present so there isn't a designated space for him — stands through the entire proceedings, even wearing his robes. The prosecutor is also dressed professionally. Witnesses

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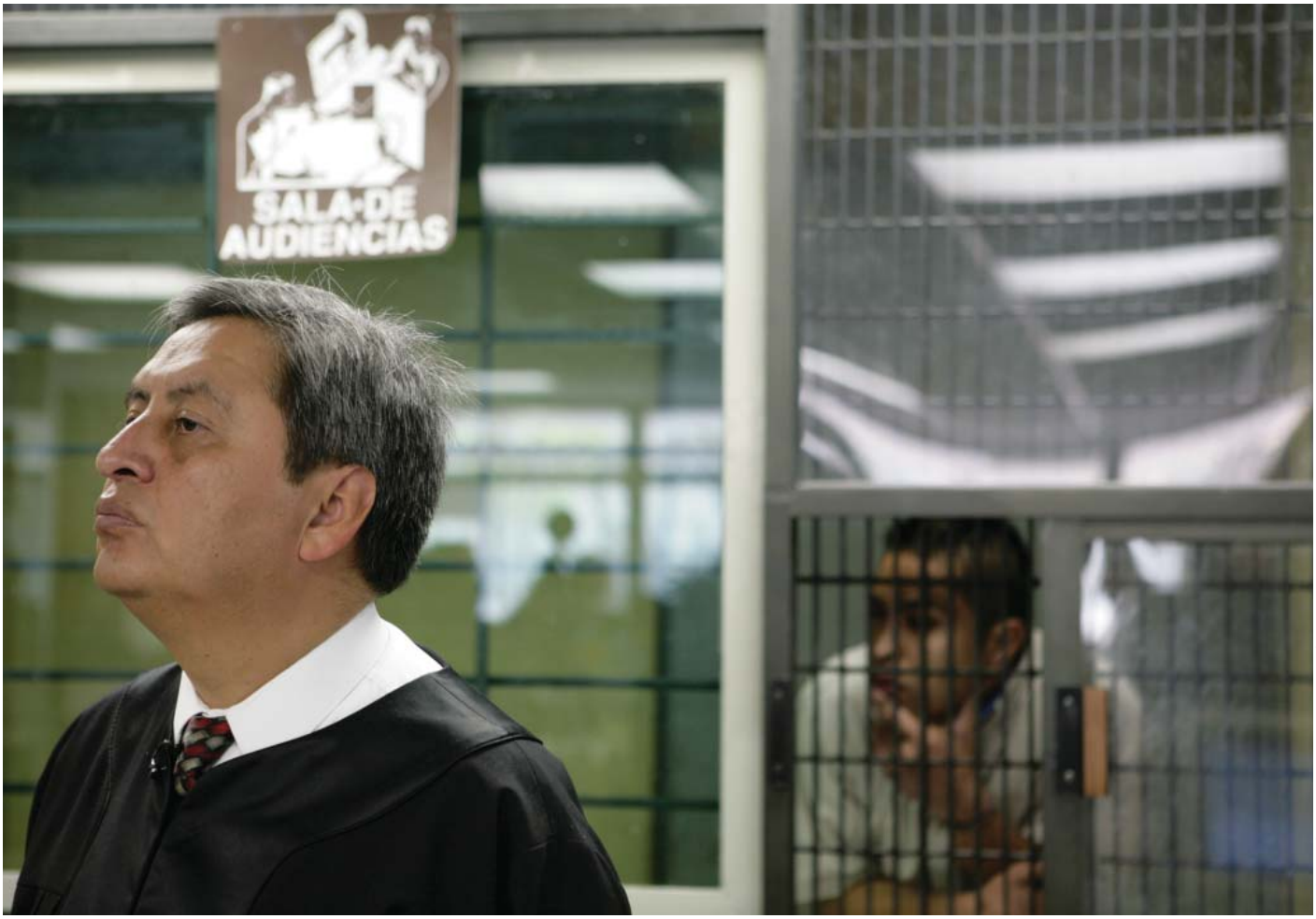

Photo courtesy of Roberto Hernández and Layda Negrete.

The judge presides over Toño's case.

for the prosecution are actually produced, though they testify only by not remembering the answers to any of the questions posed by the defense attorney.

"Toño is an everyday guy," Hernández says, explaining why they decided to make a documentary of his legal battle. "It's a case that's very representative of what anybody who is arrested by the police might experience. It's not a strange case, statistically."

Negrete adds that fully 92 percent of the defendants in Mexican courts are convicted, in most cases without scientifically validated evidence. Testimonies and depositions are accepted simply because they have been stamped "received" and entered into the reams of paper that make up the case.

"We were researchers. We knew what the patterns were and what we wanted to change in the criminal justice system: lack of presumption of innocence, the way the system can convict without evidence, lack of professional standards for police," says Negrete.

"You have these courts that are willing to convict based on anything," her husband adds. "There is no need to develop forensic expertise. Get whatever… say whatever. You'll get the conviction anyway."

The 2008 constitutional amendment requiring the presumption of innocence and an oral trial signals an important opening for increased fairness. Hernández and Negrete hope the timely release of "Presumed Guilty" will help create enough public pressure to make sure the new law is enforced.

"One of the things we've noticed is that Mexican authorities don't follow up very much. It's easy for Mexico to enact or to reform a constitution," Hernández muses. "José María Morelos was the first to do it. With the Constitution of Apatzingan in 1814, we had the right to be heard in trial and due process for the first time. But it never got implemented, and so it happened with the 1857 and 1917 Constitutions. They all talked about this right to a fair trial, but nobody has ever implemented it."

For Negrete and Hernández, their film presents a unique opportunity to make people aware of just how unbalanced the court system is. "It's incredible," Negrete sighs. "So many Mexicans believe that we have an American courtroom — that we have the prosecutor, the defense, the judge and the trial. They believe that! Because they have never been in contact with a trial."

The team envisions a grassroots approach for the distribution of "Presumed Guilty." Their earlier short film about the justice system, "El Túnel" ("The Tunnel"), was targeted at the political and economic elite. With their feature-length film, they hope that ordinary people will identify with its articulate "everyman" protagonist and begin to demand their right to a fair trial.

Hernández wants the inmates of Iztapalapa Prison, where Zúñiga was locked up, to be among the first to watch the film. "Because it's incredible, they are the ones most hurt and most vulnerable, but at the same time, most empowered by their situation to fight it. If they don't fight it, nobody else can. I think they all have a lot of fear — they are afraid if they demand anything, they will lose. They don't know that the odds are already stacked against them."

The film itself is a step toward reducing that stack of unbalanced odds. The product of an unlikely collaboration between the brave and vulnerable Zúñiga and a pair of relatively privileged lawyers who chose not to ignore his call for help, "Presumed Guilty" is already making waves in Mexico and internationally. Negrete and Hernández hope that the documentary created through this rare instance of cooperation will become a tool with the power to reform the Mexican judicial system.

Mary Ellen Sanger lived in Mexico for 17 years. In 2003, she was incarcerated for 33 days in the Oaxaca State Penitentiary on invented charges that were eventually dropped.

"Presumed Guilty," supported by the Center for Latin American Studies, will soon be premiering in the U.S. Please see http://www.presumedguiltythemovie.com (English) or www.presuntoculpable.org (Spanish).

Toño dancing while in prison.

Photo courtesy of Roberto Hernández and Layda Negrete.