



Contacts:

POV Communications: 212-989-7425. Emergency contact: 646-729-4748

Cynthia López, clopez@pov.org, Cathy Fisher, cfisher@pov.org,

POV online pressroom: www.pbs.org/pov/pressroom

Trials of Antonio Zúñiga Expose the Nightmare of Mexico's Justice System In POV's "Presumed Guilty," Tuesday, July 27, 2010, on PBS

In Groundbreaking Documentary, Two Young Lawyers Reveal a System Where the Burden of Proof Is Turned on Its Head and 95% of Mexico City Trials End in Guilty Verdicts

A co-presentation with Latino Public Broadcasting

"A nightmarish journey into Mexico's legal system that seems lifted from the pages of Franz Kafka."
— David Luhnnow, *The Wall Street Journal*

It's no wonder the Mexican police detectives in the explosive new documentary **Presumed Guilty** stare at the camera during the dramatic retrial for murder of Antonio Zúñiga and accuse the filmmakers of threatening them by the mere act of filming. The cameras are there as part of an unprecedented effort by two young married lawyers, Layda Negrete and Roberto Hernández, to bring cameras into Mexican courtrooms to expose a justice system they see as corrupt and fatally compromised by a medieval concept of guilt and innocence.

Presumed Guilty, a film by Roberto Hernández and Layda Negrete directed by Hernández and Geoffrey Smith, has its national broadcast premiere on **Tuesday, July 27, 2010**, at 10 p.m. on PBS during the 23rd season of **POV (Point of View)**. POV continues on Tuesdays through Sept. 21 and concludes with a fall special. (Check local listings.) American television's longest-running independent documentary series, POV is the winner of a Special Emmy Award for Excellence in Television Documentary Filmmaking and an International Documentary Association Award for Best Continuing Series.

In Mexico, those arrested are, in practice, considered guilty until proven innocent — with predictable results. The great majority of the accused never see a judge or even an arrest warrant. The conviction rate in Mexico City of those who do go to court is an incredible 95%¹, but 92% of verdicts lack scientific evidence.² The road from arrest to prison proceeds behind closed doors via reams of paperwork that may have more to do with bureaucratic needs than actual events.

Antonio Zúñiga was a 26-year-old street vendor and aspiring dancer/rapper on Dec. 12, 2005, when police grabbed him off a Mexico City street and shoved him into a police car. For 48 hours he was kept in a holding cell at a stationhouse and held incommunicado without being told the charges against him. His repeated questions elicited only the accusation "You know what you did." Zúñiga learned of the charges only when another detainee asked him, "Are you the guy accused of murder?"

Accused of shooting and killing a young man named Juan Reyes, Zúñiga went to a closed-door trial knowing that no physical evidence linked him to the crime and that several witnesses would testify that he had been at his market stall at the time of the murder. He had no link to the victim, no motive

¹ Tribunal Superior de Justicia del Distrito Federal, Censo, 2008.

² "Practice Matters: The Mexico City Criminal Courts, an Evaluation and Suggestions for Change," National Center for State Courts 2001

and no criminal history. The judge, Hector Palomares, found Zúñiga guilty and sentenced him to 20 years behind bars.

A young man's sudden abduction off the streets of the capital is not unheard of in Mexico. Under intense pressure to solve rising crime, especially by drug gangs, police are sometimes suspected of grabbing and charging the first hapless person they come upon, often a poor person without resources for a defense. Once someone is arrested, everyone in the system, from police to prosecutor to judge to even the court-provided defense attorney, has every motivation to keep the defendant in jail.

The same year Zúñiga was arrested, Hernández and Negrete completed their first courtroom documentary, "El Túnel" ("The Tunnel"), a damning short that stirred debate about reforming Mexico's constitution to include presumption of innocence. "El Túnel" featured the case of Marco, a young man convicted of stealing a car even though the victim told detectives, prosecutors and judges that the detainee was not the culprit. Marco's release led Hernández and Negrete to launch Lawyers with Cameras, their crusade to open the Mexican legal process to public scrutiny. It also brought a flood of requests for help, including a plea on behalf of the determined and eloquent Zúñiga, whose case rested on a single eyewitness. But by the time Hernández and Negrete were contacted, Zúñiga had lost his appeal and seemed doomed to spend 20 years in prison.

Hernández and Negrete spent months filming in Iztapalapa, the neighborhood where Zúñiga lived, to verify his alibi. Given the difficulty of documenting cases of wrongful conviction in Mexico and the scarcity of journalistic work about such cases, the couple hoped to create a collection of researched cases, including Zúñiga's story, that would then be handed over to journalists. But things took an unexpected turn when, almost a year later, Hernández and Negrete made an unexpected discovery at a Berkeley, Calif., law library. Their hunch that Zúñiga's private defense lawyer had a forged license turned out to be true. That meant that he had not been able to represent Zúñiga legally and that they could apply for a retrial.

A Mexico City appellate court voted unanimously to order a retrial. And another unlikely occurrence ensued: Hernández and Negrete obtained permission to film the new proceedings. In Mexico, a retrial does not mean that defendants get a fresh start, or a new jury. In fact, in the Mexican system there is no jury. So the same judge who had already convicted Zúñiga would retry him. Fortunately, this time around Hernández and Negrete enlisted a savvy defense attorney named Rafael Heredia — and cameras would be rolling.

Zúñiga's retrial, which lasted from November 2007 to February 2008, is the heart of **Presumed Guilty**. To many Americans, the courtroom scene will look unfamiliar, low-tech and surprisingly "in your face." Calm and determined, Zúñiga stands behind bars to present lawyer Heredia's work during the hearings. But soon he has to undertake a role he never imagined. Due to technicalities, his attorney is not allowed to ask even basic yes-or-no questions of any of the witnesses for the prosecution. In fact, the detectives can simply answer, "I do not remember," and stand by their police reports. The lead detective reasons that if his agents arrested Zúñiga and he is behind bars, Zúñiga must be guilty.

Zúñiga is also forced to cross-examine the original suspect and lone eyewitness accuser, Victor Daniel Reyes, a member of a gang allegedly involved in the shooting and the victim's cousin. As the two stand almost nose-to-nose, Reyes sticks to his story. Then Zúñiga asks Reyes whether he knows that Zúñiga tested negative for gunpowder, as did Reyes. Matching Zúñiga's slow and deliberate pacing (for the benefit of the court typist), Reyes drops a bombshell: "I did not know that they did the same test that you now mention. And it is true I did not see who fired the gun."

During the closing statements, the prosecutor decides not to make any arguments, but instead to submit them on a floppy computer disc. The judge agrees to this. In a stunning exchange with the prosecutor, Zúñiga asks her to explain, in everyday language, her grounds for accusing him. The

answer would be laughable if it weren't so tragic. "Why do I accuse him?" she says with a wan smile. "Because it's my job."

No matter how obvious the injustice of Zúñiga's conviction, the new verdict, rendered by Judge Palomares on Feb. 25, 2008, came back the same as the original one — guilty. Astoundingly, the transcripts from the retrial simply restated the original trial's judgment, dismissing any exonerating evidence. Furthermore, only what the judge had dictated had been incorporated into the court's record. But there was another, incontrovertible record of the retrial — Hernández and Negrete's video footage.

Ultimately, the video record convinced an appeals panel to free Zúñiga in April 2008 after 842 days in jail. In September 2008, award-winning director Geoffrey Smith (**The English Surgeon**, POV 2009) was asked to re-cut the film with Hernandez.

Festival screenings of **Presumed Guilty** (*Presunto Culpable* in Spanish) have elicited tears and standing ovations. Mexicans, who are aware of the dysfunction of their system, were still shocked by the picture of the bald corruption, ineptitude and absurdity that pass for a trial in Mexico. The film will have its theatrical release in Mexico this fall.

Presumed Guilty is a seat-of-your-pants telling of one miscarriage of justice and what it took to fix it, and a startling challenge to the system that produced it. It is also a cautionary tale about what can happen when police cross the line in the name of fighting crime, when power is exercised in the shadows and when the presumption of guilt is placed on the accused rather than the accuser.

"This film also demonstrates that people can defeat overwhelming odds when they trust and support each other," says director Hernández. "Antonio had the courage to trust two young and relatively privileged Mexicans with his fate. And in turn, the filmmaking process brought an unexpected meaning to his ordeal: the promise that everyone could see this farcical legal system for what it is."

Though gratified by the film's role in freeing Zúñiga, Hernández notes, "It's an expensive way to fix injustice in Mexico. Our hope is to pass a law requiring every interrogation and every criminal trial in Mexico to be videotaped."

Producer Negrete adds, "So many Mexicans believe that we have an American courtroom — that we will have the prosecutor, the defense, the judge and the trial. They believe that! Because they have never been in contact with a trial."

"This is a David and Goliath story of two people who took on a system," says co-director Smith. "It's beautiful and so heartfelt. At screenings, you can see the righteous indignation. People are angry, but they also want to channel that anger and do something about it."

Presumed Guilty is a production of Lawyers with Cameras in co-production with IMCINE and FOPROCINE.

About the Filmmakers:

Roberto Hernández (Director/Producer)

Roberto Hernández was trained as a lawyer in Mexico and Canada and had no particular interest in cameras or film until he found himself collecting statistics in the basement of Mexico City's Superior Court, which houses the archived legal cases of one of the largest cities in the world. What he saw inspired him and his wife, Layda Negrete, to make "El Túnel," a short documentary that presented scandalous facts about Mexico's justice system and was broadcast on several television stations throughout Mexico. As a result of the support the film received, in 2008 Mexico's Congress passed the most significant amendment to its constitution's due process clause, requiring public trials and the presumption of innocence. But Hernández, currently a graduate student in public policy at the University of California, Berkeley, notes, "The implementation of this reform is hardly progressing at

all, as the Mexican government today remains ostensibly focused on an offensive against drug cartels.”

In June 2006, the desperate friends and relatives of an inmate read about “El Túnel” and contacted Hernández and Negrete, pleading for help. The experience of filmmaking was fresh in Hernández’ mind, and it seemed natural for him to record that first meeting. Thus began a two-year production adventure that resulted in **Presumed Guilty**, a story that changed the young couple’s lives.

Layda Negrete (Producer)

Layda Negrete is a lawyer with more than 10 years of experience conducting research on the criminal justice system across Mexico, her country of birth. Her research has been funded by the Hewlett Foundation, the United Nations Office of the High Commissioner for Human Rights and the World Bank. She has designed and conducted surveys for inmates in the states of the Federal District (DF), Mexico, Morelos and Oaxaca and has helped design and administer victimization surveys in Mexico City. Negrete is currently a graduate student in public policy at the University of California, Berkeley.

Geoffrey Smith (Co-Director)

Born in Melbourne, Australia, Geoffrey Smith began traveling early, discovering a twin love for movies and storytelling along the way. In 1987 he found himself in Haiti, helping to make a documentary about the country’s first election in 31 years. Following the discovery of a massacre of 21 voters in a schoolyard, Smith was himself shot and wounded. After struggling to recover in London, he decided to go back to Haiti to find the man who had nearly killed him — and to film the whole thing. The resulting film, “Searching for a Killer,” won wide acclaim and was aired on the BBC. Smith discovered that the camera can be a powerful, cathartic tool that helps people through difficult periods and went on to build his subsequent work around that concept.

The winner of numerous awards, Smith has made more than 22 films and has worked for all the major U.K. broadcasters. His POV film **The English Surgeon**, about neurosurgeon Dr. Henry Marsh and his work in Ukraine, won a Christopher Award and Best International Feature Documentary awards at the Hot Docs Canadian International Documentary Festival and SILVERDOCS.

Credits:

Directors:	Roberto Hernández, Geoffrey Smith
Producers:	Roberto Hernández, Layda Negrete, Martha Sosa, Yissel Ibarra
Cinematographers:	John Grillo, Amir Galvan, Luis Damian Sanchez, Lorenzo Hagerman
Editors:	Felipe Gomez, Roberto Hernández
Original Music:	Camilo Froideval, Raúl Vizzi

Running Time: 56:46

POV Series Credits:

Executive Producer:	Simon Kilmurry
Executive Vice President:	Cynthia López

Awards & Festivals:

- San Francisco International Film Festival, 2010 – *Golden Gate Best Bay Area Documentary*
- East End Film Festival, London, 2010 – *Best Feature Documentary Award*
- Guadalajara International Film Festival, 2010 – *Best Documentary Award*
- DocumentaMadrid, 2010 – *Best Documentary Award and Audience Award*
- Copenhagen International Documentary Film Festival, 2009 – *Amnesty International Award*
- Morelia International Film Festival, 2009 – *Best Documentary Award*
- Human Rights Watch Film Festival, 2010 – *Closing Night Film*
- Sarajevo Film Festival, 2010
- Los Angeles Film Festival, 2010
- SILVERDOCS, 2010

- International Human Rights Film Festival, México City, 2010
- SXSW Film Festival, Austin, Texas, 2010
- DocPoint Helsinki, Finland, 2010
- Cartagena International Film Festival, Colombia, 2010

(For a complete list of festivals, go to www.presumedguiltythemovie.com.)



Created in 1998 by Edward James Olmos and Marlene Dermer, Latino Public Broadcasting (LPB) is a nonprofit organization funded by the Corporation for Public Broadcasting. LPB's mission is to support the development, production, post-production, acquisition and distribution of non-commercial educational and cultural television that is representative of or addresses issues of particular interest to U.S. Latinos. These programs are produced for dissemination to public broadcasting stations and other public telecommunications entities. Olmos is presently LPB's Chairman of the Board of Directors. For more information please visit www.lpbp.org.



Produced by American Documentary, Inc. and now in its 23rd season on PBS, the award-winning POV series is the longest-running showcase on American television to feature the work of today's best independent documentary filmmakers. Airing June through September, with primetime specials during the year, POV has brought more than 300 acclaimed documentaries to millions nationwide and has a Webby Award-winning online series, *POV's Borders*. Since 1988, POV has pioneered the art of presentation and outreach using independent nonfiction media to build new communities in conversation about today's most pressing social issues. More information is available at www.pbs.org/pov.

POV Interactive (www.pbs.org/pov)

POV's award-winning Web department produces special features for every POV presentation, extending the life of our films through filmmaker interviews, story updates, podcasts, streaming video and community-based and educational content that involves viewers in activities and feedback. POV Interactive also produces our Web-only showcase for interactive storytelling, *POV's Borders*. In addition, the *POV Blog* is a gathering place for documentary fans and filmmakers to discuss and debate their favorite films, get the latest news and link to further resources. The POV website, blog and film archives form a unique and extensive online resource for documentary storytelling.

POV Community Engagement and Education

POV works with local PBS stations, educators and community organizations to present free screenings and discussion events to inspire and engage communities in vital conversations about our world. As a leading provider of quality nonfiction programming for use in public life, POV offers an extensive menu of resources, including free discussion guides and curriculum-based lesson plans. In addition, *POV's Youth Views* works with youth organizers and students to provide them with resources and training so they may use independent documentaries as a catalyst for social change.

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American Documentary, Inc. (www.amdoc.org)

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