

# **Presumed Guilty: Final Report to the Human Rights Center of the University of California at Berkeley.**

**By Layda Negrete and Roberto Hernandez**

March 2009

## **Introduction**

The centerpiece of this report is our project entitled Presumed Guilty. Presumed Guilty is a feature documentary that tells the story of Antonio Zuniga, an innocent man convicted to serve 20 years in prison in a Mexico City jail and his two-year struggle to regain his freedom. A fine cut of Presumed Guilty was screened in November 2008 in Amsterdam's prestigious International Film Festival, IDFA, obtaining the 6<sup>th</sup> place in the audience award rankings amongst the 200 films screened. Through this project we have discovered with awe the power of images to advance Human Rights in our country. We are grateful for the UC Human Rights Center sponsorship during our project's critical moments. The Center's umbrella helped us maintain psychological strength to advocate for Antonio's case. In addition, the Center's contribution served as a magnet that helped us secure additional funds for our documentary by the William and Flora Hewlett Foundation, The Jan Vrijman Fund, the Center for Latin American Studies at UC Berkeley and Fundacion Arango, in addition to more than 20 additional donors. We are writing this paper as a final report to the Center.

This report has two sections. Section I lays out the project rationale, the section also it enumerates what we consider positive outcomes associated to our project and, finally, describes our project's next steps. Section 2 of this report contains the work in progress of a case study written by Roberto Hernandez of Antonio's criminal court case in Mexico DF. In this case study he describes both the actual facts of the case and the context under which this case took place. This context, he argues, foster systematic violations of basic due process rights for most defendants in contact with the criminal procedure in Mexico DF.

## **Section I.**

### **Project Rationale**

We are using our film, Presumed Guilty, as a way to disseminating knowledge about systemic human rights violations in criminal procedures in Mexico and as a way of directing a broad audience interest in judicial reform in our country.

We are pursuing the objectives described above in collaboration with a citizens based organization self denominated Red Nacional Para los Juicios Orales. We have participated in this organization for the last five years. The Red lobbied successfully to achieve a constitutional amendment approved in the summer of 2008 where

presumption of innocence was included among the due process rights in our Federal Constitution. The central question for those interested in improving criminal justice in Mexico is how to make this constitutional amendment come to life beyond the text of the Constitution. This is a particular challenge in the context of the high levels of violence Mexico is experiencing today.

Presumed Guilty has several advantages to help promote the Human Rights agenda we envision. The film has the ability to describe common pitfalls of Mexico criminal justice system in a show-me-don't-tell-me style stripped away from the academic carcass that commonly restrains due process debates. The audience can see with their own eyes how a criminal procedure looks like, allowing the spectator to judge the reasonability of the setting, the rules of procedure and the performance of all actors interacting. In the case of Antonio, our cameras recorded the intimacy of his life in prison and the development of his new trial minute by minute. Presumed Guilty brings Mexico's criminal courts to the stand allowing the viewer to decide the verdict. Our experience with the screenings we have had so far suggest that the film is self-explanatory and that most viewers would conclude that our system is in urgent need for change.

### Project Outcomes

We are considering as positive outcomes the projects press coverage and audience reached. The tables below contain information regarding these two outcomes.

April 2009 (forthcoming)	
Press	Screenings
	Gira Ambulante Oaxaca 3-11

March 2009	
Press	Audience
Rolling Stone Magazine Mexico article written by Lynn Feinshtein	Belfast Film Festival 09, March 26 to April 4. Maysles Brothers Competition for best documentary (Cinema Verite and Innovation). UK and Ireland Premiere
Others	
Facebook group with 300 members. To Use Cameras to Rehabilitate Mexican Justice	Gira Ambulante Tijuana 4-14
	Gira Ambulante Monterrey 5-12
Give meaning project with 100 signatures	Gira Ambulante Merida 12-19
	Gira Ambulante Leon 12-19

	<p>Gira Ambulante San Cristobal de las Casas 18-26</p> <p>Gira Ambulante Jalapa del 19-26</p> <p>Gira Ambulante Can Cun 25-2</p> <p>Gira Ambulante Guadalajara 27-2</p> <p>Private screenings in Club de Industriales</p> <p>Private screenings Martha Sosa and Yisel Ibarra</p>
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February 2009	
Press	Audience
<p>MX magazine article written by Humberto Padgett</p> <p>Policy Notes article by Bora Reed February 15</p>	<p>Gira Ambulante DF 5-19 February</p> <p>Gira Ambulante Cuernavaca 11-19</p> <p>Gira Ambulante Metepec 13-19</p> <p>Gira Ambulante Morelia 18-26</p> <p>Gira Ambulante Puebla 18-26</p> <p>Gira Ambulante Queretaro 25-7</p> <p>Private screenings in Club de Industriales Mexico DF</p> <p>Private screenings Martha Sosa and Yisel Ibarra</p> <p>Private screenings Monterrey</p>

January 2009	
Press	Audience
	<p>Private screening in Club de Industriales Mexico DF</p> <p>Private screenings Martha Sosa and Yisel</p>

	Ibarra
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December 2008	
Press	Audience
<p>Berkeleyan front page article in both printed and web page edition (December 3, 2008) written by Cathy Cockrell.</p> <p><a href="http://berkeley.edu/news/media/releases/2008/12/01_mexicanjustice.shtml">http://berkeley.edu/news/media/releases/2008/12/01_mexicanjustice.shtml</a></p> <p>Reforma Newspaper December 1<sup>st</sup> written by Juan Ciudadano "SOS: quiebra del MP"</p>	Private screenings Martha Sosa and Yisel Ibarra

November 2008	
Press	Audience
IDFA newspaper written by Niels Bakker	Private screenings Martha Sosa and Yisel Ibarra

October 2008	
Press	Audience
<p>William and Flora Hewlett Foundation Newsletter front-page article written by Jack Fisher</p> <p><a href="http://www.hewlett.org/AboutUs/News/Foundation+Newsletter/Lawyers+With+Cameras.htm">http://www.hewlett.org/AboutUs/News/Foundation+Newsletter/Lawyers+With+Cameras.htm</a></p>	Private screenings Martha Sosa and Yisel Ibarra

September 2008	
Press	Audience

Newspaper Milenio Diario Mexico written by Carlos Puig	Private screenings Martha Sosa and Yisel Ibarra
Newspaper Milenio Diario Mexico written by Carlos Mota	Fundraising screening Cinepolis Monterrey
Newspaper Milenio Diario Mexico written by Román Revueltas	

August 2008	
Press	Audience
W Radio interview Cine con Martha Sosa in Hoy por Hoy morning news. This station is the second most listened to in its morning news edition with national coverage.	Fundraising screening Cinepolis Arcos
Reforma newspaper article section Nacional August 30 written by Abel Barajas "Salva Filme a Acusado".	
Vertigo Magazine Mexico written by Hector Gonzalez, August 31	

### **The Strategy Ahead**

We are seeking the theatrical release of Presumed Guilty in Mexico's commercial theaters. We believe that this strategy will serve as a platform to continue our discussion regarding criminal justice reform in Mexico in tune with basic due process rights.

We are testing the idea of cameras in the courtroom as a call to action that can be embraced by a citizens' movement in Mexico.

We are flattered with several invitations to film festivals around the world. However, we are improving the current cut of our film in order to increase the probabilities of a successful theatrical release. We expect full completion of our film including new score and edition improvements by the summer 2009.

## Section II

### Watching Mexican Justice: Antonio Zúñiga and the Camera that Saved Him

By Roberto Hernández

#### Abstract

Between October 2007 and February 2008, five cameras were in courtroom 26 in Mexico City, to document the retrial of a man named Antonio Zuniga, an unemployed laborer accused of murder. What we videotaped ended up being its own surprise: The judge presided nearly every minute of the six hearings in the litigation of the case.<sup>1</sup>

Mexico is known for holding trials in which judges are not present and where situational factors render impartiality remote. Previous research shows that judges routinely hand down convictions without any scientific or empirical evidence. The high rate of convictions in spite of the low-quality evidence submitted by prosecutors suggests that Mexican courts construct guilt based on factors other than evidence.

From the lack of science-based procedures in witness identification of suspects to the manner in which the defendants are presented in court, this paper narrates Antonio's journey through the intricacies of Mexican justice and reveals a system that hastens the way to convictions in spite of the systematic weaknesses in the accusations.

#### I. The arrest and the crime.

Antonio Zúñiga stood behind rusted bars, painted over yellow, in the visiting area of Mexico City's East Prison—a facility known to city dwellers as Reclusorio Oriente. An energetic man in his mid twenties, Antonio struggled whether to tell his story in the version he experienced, confused as it was, or to fill in the blanks with pieces later assembled. Months ago he sold videogames and repaired computers at a street market in Iztapalapa, one of the city's poorest and populous districts. Now he was convicted felon, sentenced to 20 years for a murder. He could not quite yet understand how it all happened.

Where and when it started was clear: Monday morning on December 12,2005. As he left a late breakfast with his friend Nancy, three men forced him into a car, pushed her

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<sup>1</sup> The trial's footage was edited into a 90-minute documentary titled "Presumed Guilty", and is now traveling through several European film festivals.

aside, and drove off. Policemen? “I had no idea what my rights were. They bent me down, shoved me into a car, and said ‘you did it!’. I thought I was being kidnapped, but when I felt the handcuffs on my wrists, I realized my abductors could be judiciales.<sup>2</sup>

Antonio sat next to a teenager in the rear seat. He instinctively empathized: “I tried to make eye-contact with him, like saying ‘compañero, now what’s going to happen to us?’ But before I knew it, one of the judiciales forced my head down and said ‘don’t look at him!’”

The teenager’s name was Victor Daniel Reyes.

The day before Antonio’s arrest, the neighborhood was readying itself for the Day of Virgin Mary, celebrated on December 12 throughout Mexico.<sup>3</sup> That Sunday, the area’s main street—Benito Juárez—was filled with processions of people carrying images of the Virgin. Others shot off firecrackers. Victor Daniel Reyes and his cousin, Juan Carlos Reyes, had been walking on the street in the opposite direction to the crowd. The gunshots were concealed by the staccato of the firecrackers.

The vendor selling coconuts just next to the shooting did not even notice, until somebody pointed to a young man lying on the ground beside him, bleeding. “I did not quite see who did it, but some people were already saying that it was a gang. As I looked up I saw them, already far in the distance, riding on their bicycles, hiding away in the multitude. Suddenly I saw there was a boy trying to awaken the fallen man, but it was no use.”

Quickly, a crowd formed around the body. Sergio Eduardo Morales, a police officer, was driving his patrol car near the area when he was summoned to the scene:

As I circulated on Villa Cid and Villa Interior we were radioed, and informed of a hurt person. As we approached the place, upon arriving to Fuentes Estelo and Benito Juárez, we confirm there was a person lying on the ground, unconcious, soaked in a pool of blood. Iztapalapa Ambulance Unit # 606 arrived at the scene, and pronounced the victim dead. Ernesto Franco, the paramedic, determined a blow to the head as the cause of death. To the scene later arrived Román Reyes Balverde, the Uncle of the deceased, a 43 year-old man, who supplied the identity of the victim. His name was Juan Carlos Reyes Pacheco. He was 18 years old. Mr. Juan Reyes Balverde, a 44 year-old man, who is the father of the deceased, also confirmed this. Mr. Victor Daniel Reyes Bravo is taken into custody as a witness and victim, given that he shows bruises in his body.

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<sup>2</sup> Judiciales—judiciary policemen. In Mexico City they are the police that investigate crime under the orders of prosecutors.

<sup>3</sup> More on día de la virgen at <http://www.bellaonline.com/articles/art47334.asp>

The cause of death would soon be corrected to be gunshot wounds. However, the investigation was filed as a beating and the heading of every document in the police record stipulates that this is a murder case caused by a beating.

Mr. Morales, the police officer, tied a blue bicycle that had been left by the shooters to the front fender of his patrol car and drove off with Víctor to the police station. At the same time, an ambulance transported Juan Carlos' body to Cabeza de Juárez, the precinct that serves as headquarters for prosecutors and for the policía judicial, the judiciary police, who investigate crime in Iztapalapa.

The precinct owes its name to a monument to Benito Juárez that stands right next to the headquarters. In 1850 Juárez became the first Mexican president without military background, and the first full-blooded indigenous person to occupy the presidential chair. The monument displays the iconic head of Juárez. Standing 30 meters, it presides over a maze of freeways that surround its small park.<sup>4</sup> Juárez, an emblem of lawfulness in the country, is remembered for his motto *el respeto al derecho ajeno es la paz*. "To respect your neighbors' rights is peace."

The judiciary police, la judicial, have however developed a reputation for the opposite, with numerous complaints submitted yearly to Mexico City's human rights office. In 2005, the City's ombudsman reported a record high of 9000 complaints. The penal justice system seems to be the most frequent instigator of grievances, with the judiciales leading the list.<sup>5</sup>

The day of the murder, Víctor, seventeen and the reported witness, spent the night inside a holding cell in the Cabeza de Juárez precinct, custodied by judiciales.

## II. The first interview.

A judicial police officer, Mayda Bastida Gómez, was the first detective to interview Víctor, although it is unclear whether this interview took place at the scene, as his cousin Juan Carlos Reyes lay dead beside him or at the precinct. It is not possible to determine whether Ms. Gomez's report asserts that Víctor was interviewed on Fuentes Estelo (the scene), or whether she was merely describing the scene from Víctor's account. Her trial examination was not helpful, as she first denied remembering who Víctor was. For his part, Víctor affirmed a female policeman was the first to interview him upon his arrival at the precinct.

Where the interview took place is crucial. Only then is it possible to determine whether Víctor was accompanied by an adult and whether he enjoyed a certain amount of

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<sup>4</sup> See a picture at: <http://www.panoramio.com/photo/847699>

<sup>5</sup> Emilio Álvarez reported more than 9,000 complaints, a record high. <http://www.esmas.com/noticierostelevisa/mexico/495201.html>

parental protection, while making a statement. According to his father's trial deposition, no one was allowed to see Victor until the day after the murder, when police returned Víctor to him, late Monday night. In none of his interviews at the precinct was his father present. At any rate, the detective's report contains the earliest version of Victor's story as to how the murder occurred. The account is not detailed, but provided enough information to initiate a homicide investigation with greater chances of success than most: Víctor knew who the killers were and went as far as to providing the addresses and names of the suspects:

#### Investigation of intentional homicide with firearm

Complaint made against: 'Luis,' a male, 20 years old who lives on Mixtecos Street, Block 6, Section 4; 'Ojitos,' a male, 20 years old who lives on Predio Degollado; 'Crucito,' a male.

#### Deceased

The deceased is Juan Carlos Reyes Pacheco, and presents 4 gunshot wounds: one in the left hand, another in the right of the thorax, and two on the right side of the back of the skull. Two bruises: one on the right eyebrow and one on the nose.

#### Description of facts

On a street named Benito Juárez, on a Sunday, December 11, 2005, at about 15:30, Victor Daniel, 17, was interviewed. He said the deceased is his cousin, and that both himself and his cousin smoked pot. The deceased owed \$1000 pesos to Luis, the leader of the gang Clan 41... Luis had already threatened his cousin twice... Today as they walked on Benito Juarez at the corner of Fuentes Estelo, five members of the gang intercepted them, among them, Luis, Ojitos and Crucito. Luis got off a bicycle and punched Victor in the face. Victor got scared and fled, leaving his cousin alone with the gang. When Victor returned looking for his cousin he found him lying on the ground, bleeding. Questioned about the whereabouts of the gang, Victor said that he used to be a member of the gang while he lived with his stepmother, that the leader of the gang was Luis, and that Luis was the only one to own a gun..."

The report is unclear as to when a decision was made to treat Victor as a suspect of the crime. This determination, however, seems to have occurred shortly after his initial arrival at the precinct, where he entered as a witness. It is substantially less clear why Antonio Zúñiga, who is not mentioned anywhere in Víctor's story, would later be charged with and convicted of the crime. Ms. Mayda Bastida Gomez's report is one page in the hundred and thirty-eight page averiguación that purports to describe all the activities and findings of the prosecutor's office including the decision to charge Antonio Zúñiga with the murder.

To understand why, eventually, Antonio was charged with the shooting in spite of not being mentioned by Víctor, we will need to understand this nearly 140 page document and the crime-solving philosophy that stands behind it.

### III. The Averiguación System

The Mexico City Code of Penal Procedure requires prosecutors to initiate a faithful, written record where they must document all their findings and activities on a case. This document is called the “averiguación previa.” The country’s penal system is antique, inherited from the times of colonial Spain, and is centered on the production of written records, obsessively so some would say.

Under Mexico’s constitution, if caught ‘red-handed’ defendants can be held and interrogated by detectives during 48 hours, without an arrest warrant. After this period expires, a decision must be made on whether to press charges or release. In order to produce the record, a sort of administrative judge, titled “agente de ministerio público,” will be assigned to a case on a rolling basis, covering 24-hour shifts. Because a case normally arrives at any point in a shift, up to three shifts of agentes successively work on a case during the 48-hour period that the defendant can be constitutionally held. The agente covering the last shift will make a decision to charge or release.

The system regards the idea of generating written documents as essential to the process of discovering of truth. At the trial phase, a great deal of credence will be given to the writing that the Agencia produces (An Agencia is the smallest organizational unit that houses the prosecutors). Reliance on the averiguación can be so profound that a prosecutor might obtain a conviction without bringing a single witnesses to court.

To this end, agentes are empowered with a curious truth-production tool called “fe pública” (public faith). They can certify on their own the authenticity of facts they document in their averiguación. This extension of power is intended shelter their work from questioning. With it, they make up for a lack of scientific and formal assessment infrastructure for crime investigation. Even with this tool, agentes really aspire to higher standards. They routinely complain of lack of basic office equipment, not to mention effective databases, laboratories, cameras to photograph a scene, or tape to protect it.

An agente’s work is centered on the production of the written record governed by pre-existing templates and expectations. Several hundred words in every deposition entered in any given averiguación are already generated by a computer, stipulating that, for example, certain rights were made known to the defendant, or that witnesses were made aware of the penalties for perjury, or that a lawyer was present to advise the defendant. It is not clear that any of this actually occurred in any given case.

The assignments to investigate crimes do not fall on specific individuals for any time longer than their shift. To clarify, there are two different roles: policía judicial (the detective, as it were), and agentes (the so called prosecutors who are in fact judges,

who have the power to produce the *averiguación previa*). Because both *agentes* and *judiciales* are assigned to cases using a system of shifts, no clear leader of an investigation will emerge at any institutional level.

A *judicial* (pronounced *whodicial*) works a 24-hour period shift. This shift is called '*guardia*'—following by a day of rest—called '*franca*'—which in turn is followed by an 8-hour shift—called '*imaginaria*'. After this, the 72-hour cycle process starts over. (check this)

In short, the responsibility for investigating a single crime is normally handled by several different teams of *judiciales*, *agentes* and secretaries. Any person arrested in a Mexico City precinct requires six persons from the prosecutor's office to be directly involved in the case (3 *agentes*, and 3 *secretarios*). Similarly, two and sometimes up to three shifts of *policías judiciales* will be involved. The investigation is handed over several times, and is prone to be an incoherent effort.

	24 hours	24 hours	8 hours
Judiciales (detectives)	Guardia	Franca	Imaginaria
	Mayda Bastida Gomez worked 24 hours	Mayda Bastida Gomez rested 24 hours (another team took over, and arrested Antonio)	Mayda Bastida Gomez worked 8 hours (she did office work that day-she submits her report on a Tuesday, 3 days after the crime).
Agentes	24 hours	24 hours	24 hours
	Agente & secretario 1	Agente & secretario 2	Agente & secretario 3.

For Ms. Bastida Gomez, who took the case during the ‘guardia’ shift, this meant that her involvement in this murder case basically ended with her interview of Víctor Daniel Reyes. By the time she submitted her report to the agente—who had to wait until Bastida Gomez had access to a computer to type it—it was now the morning of Tuesday, December 13. At that point, the case was facing the pressure of the deadline to charge or release. By this point, Victor had been twice interviewed by different team of judiciales, and had made two additional statements to the prosecutor. Meanwhile Antonio had been arrested and forty-seven pages added to the averiguación. Since a close reading is unlikely to occur in such a case-processing environment, it was easy to lose sight the inconsistencies that Ms. Gómez’s report would generate for the prosecution’s case.

#### IV. Victor’s 48 hours

The night of the murder, an Agente de Ministerio Público questioned Víctor,. This would be his second interview with authorities, but his first with an agente and his secretary. Therefore, this statement (unlike Mayda’s) would be certified legally as true.

The averiguación states that his father was present during this interview, but we know from the trial statements of both father and son, that this was inexact. The interview took place at 22:40, an odd time considering the circumstances. Víctor was without representation or counsel. Allegedly warned of the sanctions against those who incur in falsehood “pursuant to Article 213 of the penal code”,<sup>6</sup> he now dictated a slightly more elaborated description of the attack. Just as with Ms. Bastida Gomez’s report, we only have an indirect narrative of what Victor may have told the Agente:

“THEY WERE INTERCEPTED BY FOUR MALE INDIVIDUALS WHO WERE TRAVELING BY FOOT, AND BY ONE INDIVIDUAL WHO WAS RIDING A BLUE BICYCLE. THE FOUR INDIVIDUALS ASKED THEM TO WHICH GANG DID THEY BELONG. AT THE SAME TIME, TWO INDIVIDUALS STARTED HITTING [VICTOR] WITH FEET AND HANDS, WHILE THE OTHER THREE INDIVIDUALS STARTED HITTING JUAN CARLOS [THE MURDER VICTIM]. THE DEPOSER STRUGGLED TO GET AWAY AND FLED RUNNING AS FAR AS A BLOCK, ON THE SAME STREET THEY WERE WALKING. FIVE MINUTES LATER HE CAME BACK TO CHECK ON HIS COUSIN, WHOM HE FOUND UNCONSCIOUS AND APPARENTLY BLEEDING FROM THE HEAD. AT NO POINT HE HEARD GUNSHOTS. THE NAME OF THE INDIVIDUAL WHO WAS RIDING THE BICYCLE IS LUIS, AND HE DOES NOT KNOW HIS LAST NAME. HE KNOWS HIM BECAUSE FOR A WHILE HE HUNG OUT WITH THEM, AND OTHER INDIVIDUALS OF THE SAME AREA. LUIS LIVES NEAR A CHICKEN GRILL ROOM. AS TO OJITOS AND CRUCITO, HE DOES NOT KNOW THEIR REAL NAMES, OR ACTUAL

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<sup>6</sup> He may have also been made aware that for those under 18, such sanctions do not apply.

ADDRESSES, BUT KNOWS HOW TO GET TO THEIR HOMES. HE KNOWS THEM BECAUSE BOTH LUIS AND HIMSELF PURCHASED MARIHUANA TO LUIS [SIC]. AND APPARENTLY THE MOTIVE OF THE ATTACK WAS THAT JUAN CARLOS OWED MONEY TO LUIS... WHEN HE MET LUIS, HE LEARNED THAT LUIS HAD A SMALL .22 GUN. HE ALSO ADDS THAT AS HE FLED THE SCENE, HE NOTICED THAT LUIS WAS PULLING SOMETHING OUT OF HIS WAIST, A BLACK OBJECT, APPARENTLY THE SAME WEAPON.

After making the statement, we know very little about how Víctor spent the night at the precinct. During the time he was held, police records show that he was asked to supply descriptions of the attackers, which would have been rendered into sketches. Although Victor later confirmed that he did do the sketches, these were not found on file or submitted to the court. He also submitted to a gunpowder residue test, which came out negative.

The next morning, after returning to the precinct with Antonio and the detectives, Victor submitted a third statement, again similar to the previous ones. It is almost identically worded as his 2<sup>nd</sup> statement in all but one crucial respect. It now inserts the name of Antonio in the story. According to the third statement, Antonio arrived at the scene accompanying Luis, telling the victims “ya chingaron a su madre” (“now you are fucked”), and proceeded to beat the cousin and Víctor.

After signing this last statement, the prosecutor discharged Víctor, who returned to his father. After being victimized, treated as a suspect and subjected to interrogation, he was free.

#### V. Antonio's 48 hours.

Antonio was not told specifics about the charge against him. In the absence of any real infrastructure to solve crimes, detectives in Mexico City tend to rely heavily on confessions, and they fear defendants might change their story once they know the specifics of the accusation. According to Antonio, all he was told in essence during the questionings was: “You killed him! You killed him! Now, tell us where did you put the gun?”

No gun was ever found. Antonio's face did not match the physical descriptions that the Victor provided to police. The average age of the other gang members was some 20; Antonio was 26. No fingerprints were recovered from a bicycle that an assailant left at crime scene. Instead, police sent the bike for a market-value assessment, which reported a value of \$200 pesos (\$20 dollars). None of the merchants and friends were heard who could testify that Antonio was not a gang member and that he had spent Sunday far from the crime scene with them. When friends came to the police precincts, inquiring about Antonio's whereabouts, they were told to wait, but were not informed of the charge.

A few couple of hours after Antonio's arrest, Nancy Gabriela had managed to find him. She had shared breakfast with Antonio and was with him at the time of his arrest. As with Antonio, she initially thought he must have been kidnapped. When she told traffic police officers details about the incident, they, however, told her only judiciales can drive around town in cars without license plates. They said she should go look for him at the precinct in "Cabeza de Juarez", the main police and prosecutorial headquarters for all Iztapalapa.

Accompanied by her friend Hector, Nancy Gabriela found the precinct and confronted the detectives about the arrest. They confirmed nothing more than that Antonio was held at the facility. Hector recalls that detectives looked at him suspiciously, murmuring, "Maybe this is the one we are missing". Hector and Nancy quickly decided to leave.

In my interviews with them, Nancy Gabriela and her friends insisted that they had spent the day with Antonio on the day of the murder. The murder had taken place at about 14.30- 15:00 pm. But they were well away from the Benito Juárez crime scene. The police did not know this, however, as they never interviewed his companions on that day. Had they asked Antonio's friends, it would have been made clear to them they had the wrong guy.

The police refused to speak with any of the persons who came looking for Antonio. They made them wait for two days, and ultimately sent them home. Antonio was charged without any verification of his story. A few hours before the 48 hour term lapsed, he was informed of the details of the charge by a prosecutor in that shift. This was minutes before his last interrogation by judiciales.

With what Antonio took to be a wink in the eye, one detective said that they might help if he had money for bail. 'Tell me how much, and why' Antonio replied. The detective stormed out saying 'I wanted to help you!'.

Antonio told the prosecutor that he had spent Sunday at a market place, selling videogames, accompanied by Ulises, Armando, and Nancy. He also accused the detectives of mistreating him, but said he held nothing against them. The prosecutor did not act on the complaint.

What the police had two days after the shooting was a body, a bike worth \$200 pesos, two bullets retrieved from the body, and the testimony of the 17 year-old youth. With no physical evidence and Antonio denying the crime, the prosecutor decided to indict him for the murder of Juan Carlos Reyes.

This is not unlike any of the 400 randomly selected cases that I had reviewed while I was a researcher for the National Center for State Courts, at the Tribunal Superior de Justicia del Distrito Federal (more later).

## VI. Incarceration.

Antonio was taken to one of Mexico City's most dangerous prisons: Reclusorio Oriente, a facility that holds 11,000 of the City's estimated total 30,000 inmates. He was incarcerated in a cell so crowded he had to sleep on his feet. Next morning, he was summoned to courtroom number 26, presided by a judge, Héctor Palomares. To Antonio's surprise, he walked unaccompanied from the prison to the courtroom, through a tunnel. During the months that followed, Antonio witnessed his trial from inside the prison, standing behind a barred window looking out onto the courtroom.

After a point, a piece of paper with fine print, about twice the size of a U.S. dollar bill, was passed through the bars to him. He was being served notice that a judge had found him guilty. There was no explanation. The document ordered him to serve 20 years in prison, and to pay to the relatives of the victim a sum of \$30,000 pesos.

I was in a hotel in Monterrey, Mexico, relaxing after a day-long conference on pretrial detention, when the phone rang. My wife, Layda, picked it up. The voice she heard was desperate. It was a woman named Giovanna, and she was pleading for help for her friend Antonio. This was the second time she had called, and Layda could not find a polite way to turn her request down. Still, we agreed to meet. We were packing our possessions to move to Berkeley, to initiate our doctorates.

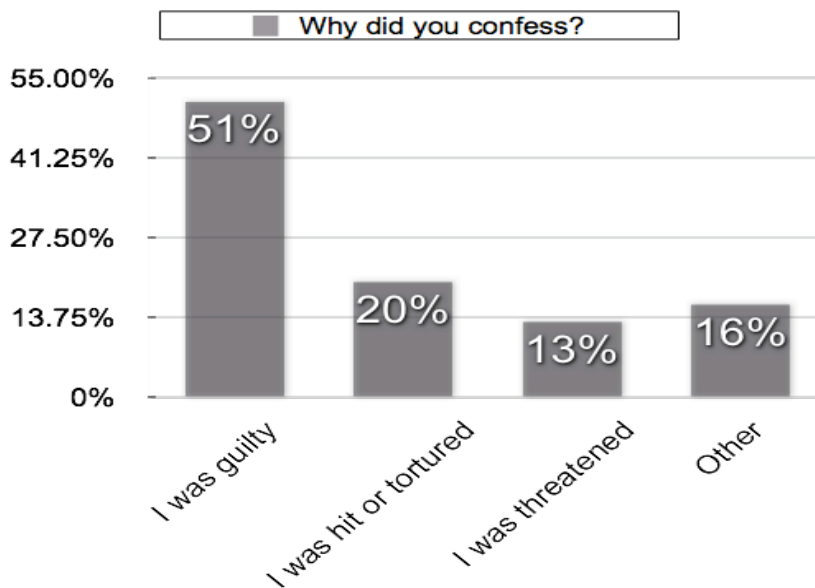
Layda and I had just finished a cycle in our lives. We were young professors, and we had recently been involved in an effort to raise awareness about the need for penal reform in Mexico. Both Layda and I had made a short film that underscored that large numbers of prisoners in Mexico were being held unnecessarily, some for minor crimes, some in spite of being innocent. Giovanna had found our names in a newspaper. The experience of filming was fresh in my mind, so when Antonio's friends came knocking on my door, I just knew I should film the interview. I can edit the footage as a farewell to Mexico for an evening newscast, I thought. It started a major two-year production adventure.

Antonio had spent four months in prison when I was first able to meet him. Only after about a year had passed since his conviction was I able to introduce a camera to the prison to record an interview.

## VII. The human rights environment in Mexico City

Torture and mistreatment of both defendants and victims are pervasive in Mexico City. Some academics (such as?) sustain that during 70 years of PRI rule, the policing system served an equivalent function to that of the militaries in Chile and Argentina. Among their functions they were charged with maintaining a strict social order and guaranteeing the absence of critique to the regime. If this is true, the police at no time had incentives to generate abilities to investigate crime through technical methods. Thus, the method for "solving" crime frequently involved psychological mistreatment and even torture.

Although it is difficult to quantify the amount of torture, the available information indicates that this still exists. Two inmate surveys by CIDE reveal that at least 33% of detainees were maltreated by detectives. The table summarizes troubling findings from an inmate survey with a sample size of 1500



By collapsing the mistreatments of torture and threats we obtain that at least 33% of detainees are mistreated. The objectivity of this statistic is questionable because the survey respondents are the detainees. However, it seems unthinkable that a survey to those in charge of investigations would render a reliable result. Defendants are more likely to remember the event of mistreatment that they suffer, than prosecutors, who handle numerous cases. On the other hand, the survey is applied several months after the mistreatment event, and is based on a sample of convicted inmates. The survey instructions make it clear to the respondent that the answers will have no impact on his case.

In interview, some prosecutors have acknowledged and explained the mechanics of torture. In an interview conducted by myself and Roberto Hernandez in August 2007, a prosecutor provided details about his experience with contemporary interrogation practices in the police:

“Here, have your human rights asshole. Take your clothes off! The detective held a coffee pitcher above the guy’s back, and slowly started pouring cold water on his back. The guy was scared to death. It was just water, it is psychological torture, I know, but he did not know what was going on. He was screaming “ay, ay”. In the meantime, I was stinging him with a pen. He was scared to death and inside, I was laughing. “Now, tell us”. In the end he told us where the others were, and who they were, and we went to get them.” I am well aware of human rights, but sometimes you just have a hunch that a guy is lying , and you just know.”<sup>7</sup>

The critics of torture in Mexico generally launch their attacks on the practice based on illegality, but few in Mexico explain that these practices can just as easily lead to identification errors.

The potential for false positives greatly increases in a context of routine physical or psychological mistreatment. These practices contribute to crime and violence not only directly, as they are a crime in themselves, but also because they risk a failure to correctly detect criminality. The real criminals have better chances of walking the streets because they can pay to be set free or because the system will charge innocents with the crimes they committed.

In a context where the abuse by the police is routinely tolerated by authorities and the judiciary, victims, who in theory one would assume are the only benefited by such a system, are in fact most easily victimized by the system itself. In Mexico, the police quickly transform victims into primary suspects. For a detective group that has little interest in solving crimes, and is ultimately compelled to pin the crime on anybody, any citizen is the ideal suspect. This includes victims and witnesses of a crime.

Antonio Zuniga was identified an underage witness who had been detained and possibly coerced at police headquarters for over 24 hours, without a lawyer or tutors. This person, we think, was compelled to positively identify any person when, reportedly, the

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<sup>7</sup> Spanish original in file with author: “A ver cabrón, toma tus derechos humanos, no te hagas pendejo, encuérate...” Y el comandante tenía una cafetera con agua fria. El comandante agarra agua fria y se la empieza a tirar en la espalda muy despacito, era pura pinche agua, es tortura psicológica, pero el otro no sabía qué era. Gritaba “ay ay”. Mientras yo le picaba con una pluma bic un poquitito, estaba asustadísimo, yo me reía, “A ver dínos”, y al final de cuenta nos dijo quiénes fueron y dónde estaban, y fuimos por ellos. Yo soy muy conciente de los derechos humanos pero si hay veces que dices, este gey me late que se está haciendo menso y que ya lo sabes.”

police told him; “dinos quiénes fueron o tú te vas a ir al bote”: “either you tell us who it was or you’re the one who’s going down”.

In observations Layda made at the policía judicial headquarters in 2001, she recorded in her notes being particularly intrigued when she noticed a couple of rooms, approximately 9 feet by 4 feet. The precarious space, poorly lit and equipped only with one plastic chair and no recorders, seemed like a closet whose only purpose was to conceal cabling and sewage. Upon inquiring about its purpose, the detective proudly presented them as their interrogation chambers.

Most worrying, however, is that a typical prosecution will be welcomed not only by a lax judicial oversight, but even cooperation. In the third week of August 2007, a nationwide newspaper reported how a federal judge convicted 17 defendants based on “stuff he read on wikipedia”.<sup>8</sup> The information was not submitted by any of the parties to the proceeding.

#### Concluding remarks

The story of Antonio Zuñiga is to our knowledge the first filmed trial in the history of Mexico City. It is the only visual record that exists today of the mechanics of the penal procedure in the largest city in the world. The effort to document this story has not been concluded yet, and so this report does not fully capture what believe needs to be said. A documentary film about Antonio's case is still in the cutting room. A fine cut is circulating in Mexico and it is still early to speak about its impact. My objective in this report was to describe how Antonio was charged and tried through a system that relies heavily on written documents.

The averiguación previa, a document that is produced during a 48 hour period while the defendant and often witnesses against him, are held prisoners, is far from an objective record. Instead, this document turns out to be the arena where the legal truth is constructed--a truth that is often far from reality. The averiguación confines the possibilities of the defense and removes any chance of questioning of police work, resulting in zero accountability. While this report may not yet show how this happens, the fine cut of the film already does, and we hope that by the end of this year we can invite folks at the Human Rights Center for our Berkeley Premiere.

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<sup>8</sup> See <http://www.eluniversal.com.mx/notas/445335.html>