



Photo courtesy of Layda Negrete and Roberto Hernández.

CINE LATINO

The attempt to censor “Presumed Guilty” helped catapult the film to national prominence.

No Such Thing as Bad Publicity

by Roberto Hernández

March 2, 2011. At home in Berkeley, California the phone rings. A voice tells me: “You’re going to be on the air in five minutes.” In the background, Joaquín López Dóriga, Mexico’s Anderson Cooper, introduces me to the audience, and I’m on.

Surely this surreal moment is the wildest dream of every documentarian: to tell a story that will catch the attention of the mainstream media. And here I am, awake. I hear my trailer playing, reaching the millions of Mexicans watching their televisions. But this isn’t a moment of unmitigated joy. Joaquín is telling the audience

that a judge has banished my film from theaters, news to all of us — but especially to me.

My wife — Layda Negrete, the film’s co-star and producer — and I had yet to unpack from our whirlwind tour through Mexico for the theatrical launch of our film “Presunto Culpable” (Presumed Guilty). Exhausted from the weeks spent glad-handing and giving hundreds of interviews, all we wanted was rest and a return to the privacy and scholarship of our doctoral dissertations — and perhaps a glass of celebratory champagne.

Box office returns had “Presunto Culpable” trouncing Oscar heavyweights “Black Swan” and “The King’s Speech” — a rare feat for a film bearing not one, but two handicaps:

nationality and genre. Mexicans may like the national soccer team, but they don't go to Mexican films; and they aren't accustomed to watching documentaries.

How did this happen? Back in June 2010, I had called Miguel Mier, the COO of Mexico's biggest theater chain with a crazy proposal. "Presumed Guilty" was ending a nearly two-year film festival run. Our winning streak included 15 top honors from Los Angeles to New York, Copenhagen to Madrid. Along the way, we had graced the weekend front page of *The Wall Street Journal*, and PBS had aired our film nationally in the United States. Still, no Mexican distribution company wanted to touch it.

Universal Pictures flirted close to a deal, but backed out when a Mexican animated film bombed at the box office. Tired of not cementing a satisfactory agreement with distributors, I went straight to Cinépolis, the biggest Mexican exhibitor and the fourth-largest theater chain worldwide.

"Miguel, has anyone ever distributed a Mexican film on a not-for-profit basis in Mexico?"

He laughed, "Not intentionally. Most of them lose money." The line was breaking up, as always, at the worst possible moment.

It was the same number Toño Zúñiga, our protagonist, had used to call us from the Mexico City prison where he was held for two and a half years. "Presunto Culpable" is his story. An inmate, falsely accused of murder, Toño is one of the few to have emerged victorious from the hell that is the Mexican judicial system.

I had never met Miguel Mier, but several months previously, I had spoken briefly with his boss, Alejandro Ramírez, the CEO of Cinépolis. After seeing "Presunto Culpable" at the Morelia Film Festival, Alejandro rose from the audience and said: "Everyone in Mexico must see this film." At the time, I had no idea who he was or of the significance of his comment. When the screening was over, reporters rushed to us with their questions, and I fled to the entrance of the multiplex as soon as I could manage it. There, I was approached by the man from the theater. He was in his forties, wearing a black suit and a nametag hung backwards. Assuming that he needed no introduction, he congratulated me and offered to help. I took the liberty of grabbing his nametag and drawing it close to my nearsighted eyes. "Alejandro Ramírez," I read, mortified. Nearly a year later, Alejandro's help would materialize in an extraordinary way. Months after that day, he would be holding home dinners with Mexico's top opinion-makers and film industry moguls. His engagement in every detail propelled the film's launching.

As the line crackled back to life, I closed my eyes, trying to shape my thoughts into a clear sentence: "Miguel,

has Cinépolis ever distributed a film so that the box office proceeds go to a cause? Has it ever been done?"

"In the 40 years this company has existed, we've never distributed a film," he said. "And as far as I can recall, not-for-profit distribution has never been done in Mexico." So began a conversation that culminated in the most ambitious — and most successful — theatrical release of a documentary in Mexican history. But "Presunto Culpable" was not born destined to be a lucrative crowd-pleaser.

We had filmed with a budget donated by the William and Flora Hewlett Foundation, which had sent its support through the Center for Latin American Studies at UC Berkeley and Renace, an organization in Monterrey, Nuevo León, that specializes in helping those who have been wrongfully convicted. In 2008, with the aid of film editor Felipe Gómez, Layda and I produced the first rough cut of the film. We were invited to the Amsterdam Film Festival, where it did well, ranking sixth for the audience award. Then we went on to Belfast, where it earned the top prize. In spite of our success, I was not convinced that the film was at its best: pieces were missing — including footage I had lost and later recovered.

My worst fears were confirmed at the True/False Film Fest in Columbia, Missouri. Since we didn't want to show the film as it stood, the festival organizer offered us a "secret" screening. But the intimate showing proved a disaster. Layda watched the audience of about 30 from the back of the room. Distracted throughout, at the climatic moment, the faceoff between the witness and the protagonist, people began to leave. It was clear that this was not an easy film to watch for an American audience. And the question remained: How would it play in Mexico?

Resolved to improve the film, our producers Martha Sosa and Yissel Ibarra, agreed to help. Martha asked Geoffrey Smith, a BBC documentary director with decades of experience, to come to our aid. Geoffrey joined me in the cutting room for two months in Valle de Bravo, Mexico. His approach was to keep the storyline as simple as possible, eliminating subplots and secondary characters. Martha and Yissel brought in Lynn Fainchtein from "Precious" as music supervisor, and she in turn invited Milo Froideval and Raul Vizzi, the top musicians from "Capadocia" and other Mexican TV dramas. Toy Hernández, a rap artist, made Toño Zúñiga's original rap songs sound louder. And lastly, my brother Jorge Hernández added motion graphics, leaving the film ready for Martin Hernández to edit the sound.

During this reconstructive surgery (with an unfinished sound edit), the film premiered at the Toronto Film Festival. During its second screening, at a packed AMC

>>

theater, Geoffrey and I got a two-minute standing ovation. But all this excitement garnered only silence from buyers and distributors. I soon learned that film festival success and commercial success are two entirely different things.

...

Options for a U.S. theatrical release dwindled and died. PBS had already scheduled the broadcast, and we decided not to renegotiate to push back the broadcast date, effectively ending our chance for a U.S. theatrical launch. Meanwhile, Mexico remained a sort of forbidden territory for “Presumed Guilty.”

Without a distributor, how could we reach a Mexican audience? Could we rent theaters? Hold free public screenings? But then, why would an audience show up? Is a free movie really appealing? Could we ask for donations to make the theatrical release as large as possible? But then, why would donors contribute to an essentially commercial enterprise? Slowly the idea of a not-for-profit distribution started to take shape. But time passed quickly, and the film was by no means a hot, new thing.

When Cinépolis finally agreed to distribute “Presunto Culpable” pro bono, they projected losses of \$150,000, and Miguel Rivera, the head of programming, suggested that the company could only commit to 50 or 60 prints.

At the Morelia Film Festival in October 2010 — a year after I had met Alejandro Ramírez — I finally met Miguel Mier in person. It was after a party, and I finagled a ride back to my hotel. Clearly excited about launching, he told me, “You can’t imagine what we’re going to do with this film!” I trusted his enthusiasm but worried that our efforts were being spent on too few prints. Sixty prints would not cover Mexico City — precisely why I had rejected offers from minor distributors. And though we could take the 60 prints and run around Mexico, by the time we got to the north or the south, the publicity would have faded. Moviegoers would be on to the next new release.

In the car, I made my pitch. “So, Cinépolis is going to make 50 or 60 prints, right?”

“Maybe 60.”

“Suppose I can get donors to make individual donations to buy more prints...”

“Yes...?”

“I’m thinking it’s feasible to ask people to donate a print... I mean, each might cost, what? \$900?”

“About.”

“So, the question is, how many prints would Cinépolis program? Because I can’t ask donors to put in money if...”

Miguel replied quickly, as if the number had already been in his head. “We could program up to 300 prints.”

Roberto Hernández with, from left, Senator Adriana González Carrillo, Senator Claudia Corichi García, and former governor Amalia García Medina, Mexican participants at the U.S.–Mexico Futures Forum, April 2011.



Photo by Megan Kang



Photo courtesy of Layda Negrete and Roberto Hernández.

A still from the film depicts prison life.

I got to work right away. That night, I e-mailed Ernesto Canales, a long time supporter and one of Mexico’s leading crusaders for judicial reform. I briefly explained that we needed 250 friends willing to donate about \$900 a piece. I also used social networks and, thanks to the San Francisco Film Society and the efforts of Anat Shenker-Osorio, we were able to set up an Internet mechanism to receive donations. Finally, we knocked on the doors of the American Embassy in Mexico. For its part, Cinépolis obtained in-kind donations and discounts that reduced the costs of prints and advertisement. And the efforts paid off.

The film launched on February 18, 2011, with 130 prints — a sizable number for a documentary. Cinépolis financed 60, and donors covered the rest, mostly through tiny contributions in pesos from all across Mexico. Nicolás Vale, an associate producer, and Renace obtained donated publicity at bus stops in México City, Guadalajara and Monterrey. We and Cinépolis agreed to give the box office proceeds, after taxes and the exhibitor’s fee, to Renace.

The opening gala drew 900 celebrities, with Mexico’s First Lady among the crowd. By early March, “Presunto” had exceeded everyone’s expectations, and Cinépolis decided to add copies, bringing the total to 200 prints in circulation. When Toño Zúñiga and his family showed up to see the film one Saturday afternoon, they couldn’t get tickets! With Cinépolis, the operation worked like an expertly

orchestrated dream. A dream interrupted by a judge named Blanca Lobo, who decided our film should not be seen.

...

The voice of Joaquín López Dóriga breaks in on my remembrances: “Roberto Hernández is the producer and director of ‘Presunto Culpable.’ You are a lawyer, so what is your opinion of the judicial order that temporarily prohibits the theatrical exhibition, promotion and distribution of ‘Presunto Culpable’ in Mexico?”

Silent seconds go by as I try to formulate an answer. The question seemed technical and at the same time was presented as if this were a normal legal procedure. However, it is anything but normal for a judge to decide what can be seen on the big screen. The question cried out for a simple answer, but I could not provide one: “Every democratic society recognizes the right of its citizens to be tried in a public hearing when the state accuses them of a crime. We think filming a trial is the only way to force transparency into this system. We are sadly surprised at this attempt to censor the film.”

Seemingly unsatisfied, Joaquín goes to the heart of the issue: Did I have the consent of the participants? “Victor Reyes, the witness who accused Zúñiga, he says he did not authorize the use of his image in the film. What do you say?”

>>



Photo courtesy of Layda Negrete and Roberto Hernández

A courtroom scene from “Presumed Guilty.”

Indeed, what to say? Should I respond that Mexico City inmate surveys show that 60 percent of inmates can hear little to nothing of their trial? That it is a physical impossibility for them to hear anything because judges place dot matrix printers at the center of the desk where witnesses are deposed? That defendants stand behind a barred window, where simultaneous hearings of other trials are routinely held? That witnesses are forced to dictate their statements, very slowly, for the benefit of a typist? And that, even then, typists can edit responses or simply invent them out of whole cloth? That the chaos is such that it is impossible, without the aid of microphones, videotaping and serious editing, to actually be able to make sense of a trial?

“We believe that the consent of trial participants is not necessary to videotape. We had permission to film. At this point, we need the support of the people. We need them to flock to theaters before the film is pulled. We need them to express indignation on social networks, we...”

Joaquín interrupts: “You may not be aware of this, but as we speak, on Twitter ‘Presunto Culpable’ is among the top 10 trending topics. People are generally upset, with a few exceptions, of course. However, Víctor Reyes says his testimony was recorded without consent. And a judge in principle agrees, so she temporarily banned the film. She

says she will decide if it is a definitive ban by mid-March. The 200 prints will be pulled from theaters tomorrow. That is what we know right now. Now, should the judge next decide to withdraw the ban, it will have been great promotion for the film, just like what happened with ‘El Crimen del Padre Amaro,’ when the Catholic Church prohibited it, isn’t that right?”

“No,” I think. “That’s not the right comparison. This is far more serious.”

What I actually manage to say is: “Joaquín, this is very different from what happened to ‘Padre Amaro.’ This is a censorship attempt straight from the judiciary. It is an attempt from a dying system, overdue for reform, to hide a very serious problem. We do not have a democratic judiciary that shows its face to its citizens. This must change, and ‘Presunto Culpable’ is, for the first time, showing Mexicans how they would be tried if criminally accused. And it is urgent for them to know because the freedom of all Mexicans depends on this system, and our freedom today is in the hands of these judges.”

...

The judicial ban was a blessing in disguise. To quote *The Economist*, it “backfired gloriously.” In a matter of

hours, counterfeit copies of the film crammed flea-market stalls. Merchants selling pirated copies stockpiled it next to Hollywood’s most recent releases. Pirates used the festival version of our film’s poster to wallpaper their stands. They played the movie nonstop on the TV sets they use to show off their products to customers. Subway merchants hawked it: “*Llévela, llévela...* take it home, take it home, the movie that our government doesn’t want you to see.”

Even though Renace will see none of the revenue the pirates pocketed, they took the film where no legal film distributor ever could. Almost overnight, “Presunto Culpable” became the best-selling film in prisons across Mexico. Within days, an inmate dared to demand that his trial proceedings be videotaped.

A YouTube link to the film received 300,000 views in one weekend, and we received e-mails of support from all over the world. In the end, we had to be thankful to Judge Blanca Lobo: we never would have been so successful without her.

A couple of days later, a superior court reversed Judge Lobo’s injunction, and the film returned to theaters. Cinépolis went up to 300 prints — the number that Miguel Mier had intuitively felt was right from the start. And by the end of April, the theatrical run came to its natural end.

The labyrinthine trial before Judge Lobo continues, silently. It has become impossible for the media to follow

its twists and turns. Meanwhile, the substantive discussion remains to be had: What does it mean to be tried in a public hearing in Mexico? What are the limits of public hearings vis-à-vis the right to privacy? What is the extent of free speech? The answers from the Mexican judiciary will come very slowly, if at all, and we don’t know who will prevail in court.

Regardless of the verdict, “Presunto Culpable” has already placed millions of Mexicans in Toño’s shoes. For the first time in Mexican history, people saw their justice system at work, uncovered by a film that refused to be didactic. Instead, viewers got to experience emotionally what it would be like to be falsely accused of murder. Through the magic of cinema, viewers gradually acquire Toño’s point of view. They share his dread as he chooses to risk his life in order to make the documentary. They are there as he fights his unequal courtroom battle. They experience his doom and his hope, just as we did.

Roberto Hernández is the director of “Presumed Guilty” and a Ph.D. candidate at UC Berkeley’s Goldman School of Public Policy.

Produced with the support of the Center for Latin American Studies and the William and Flora Hewlett Foundation, “Presumed Guilty” was nominated for three News and Documentary Emmy Awards in 2011.

Layda Negrete speaks at the Morelia Film Festival, while Roberto and co-director Geoffrey Smith comfort a weeping Toño.



Photo by Paulo Vidales/Imagen Latente.