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Imagine being picked up off the street, told you have committed a murder you know nothing about and then finding yourself sentenced to 20 years in jail. In December 2005 this happened to Antonio “Toño” Zúñiga in Mexico City and, like thousands of other innocent people, he was wrongfully imprisoned.

*Presumed Guilty*, a feature length (hour long) documentary, is the story of two young lawyers and their struggle to free Zúñiga. Their surprising tool? A camera that would be filming Zúñiga’s entire retrial. Shot over three years with unprecedented access to the Mexican court and prison systems, the film is highly dramatic and full of real suspense, yet it is also a searing indictment of a system that presumes guilt and thereby relieves the police of the need to investigate.

As an outreach tool, *Presumed Guilty* can be used to raise questions about human rights, the effects of a system that is a “justice system” in name only and the role of cameras in the courtroom. It offers important lessons for anyone working to improve a criminal justice system and is a must-see for those involved in Mexico’s legal reform efforts.

© American Documentary, Inc.
Presumed Guilty is well suited for use in a variety of settings and is especially recommended for use with:

• Your local PBS station
• Groups that have discussed previous PBS and POV films relating to Mexico or the organization of justice systems, including *El General*, *William Kunstler: Disturbing the Universe*, *The Reckoning: The Battle for the International Criminal Court* or *The Judge and the General*
• Groups focused on any of the issues listed in the Key Issues section
• High school students
• Law students studying criminal law or comparative criminal law or engaged in clinical education
• Faith-based organizations and institutions
• Cultural, art and historical organizations, institutions and museums
• Civic, fraternal and community groups
• Academic departments and student groups at colleges, universities and high schools
• Community organizations with a mission to promote education and learning, such as local libraries

Presumed Guilty is an excellent tool for outreach and will be of special interest to people interested in the following topics:

• Camera in courtroom debates
• Court system
• Criminal justice
• Comparative law
• Human rights
• Justice system
• Legal reform
• Mexico
• Prison reform/incarceration
• Role of judges and attorneys
• Rule of law

POV

DISCUSSION GUIDE

Presumed Guilty

POTENTIAL PARTNERS

KEY ISSUES

USING THIS GUIDE

This guide is an invitation to dialogue. It is based on a belief in the power of human connection, designed for people who want to use Presumed Guilty to engage family, friends, classmates, colleagues and communities. In contrast to initiatives that foster debates in which participants try to convince others that they are right, this document envisions conversations undertaken in a spirit of openness in which people try to understand one another and expand their thinking by sharing viewpoints and listening actively.

The discussion prompts are intentionally crafted to help a very wide range of audiences think more deeply about the issues in the film. Rather than attempting to address them all, choose one or two that best meet your needs and interests. And be sure to leave time to consider taking action. Planning next steps can help people leave the room feeling energized and optimistic, even in instances when conversations have been difficult.

For more detailed event planning and facilitation tips, visit www.pbs.org/pov/presumedguilty

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Arrest and Trial Procedures

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.

At present, a person who commits a crime in Mexico has less than a 2 percent chance of being caught and punished, in part because police often ask a person who reports a crime to pay for the case to be solved; a person who refuses risks becoming a suspect himself or herself, which discourages cooperation with police. A study released in 2008 indicated that Mexican citizens had extremely low confidence in police action and efficiency, which causes them to shy away from reporting crimes.
With violent crime, particularly crime related to drugs, rampant in Mexico, police are under pressure to make arrests. Rather than being evaluated on the accuracy of arrests, however, officers and even prosecutors are judged solely on the number of incarcerations, meaning that there’s little incentive for them to spend time seeking out a crime’s actual perpetrator. It is estimated that in nine out of 10 cases, an arrest is made without any scientific evidence — such as fingerprints or DNA — whatsoever; Mexico has no comprehensive fingerprint database, and police have little access to forensic equipment. In more than six out of 10 cases, suspects are arrested within three hours of the crime, suggesting that little to no serious detective work could have taken place.

Furthermore, an arrest is often made without the victim having identified the accused. Instead, an initial police investigation identifies the person believed to have committed the act. (This measure is meant to protect the victim, particularly in the case of rape or kidnapping, or when the victim is a minor.) Even when witnesses are called to give testimony, more weight is placed on the paperwork filed before the trial than on live statements.

However, the law does allow a procedure called a careo (short for careo probatorio), in which a defendant may confront his or her accuser face-to-face. The meeting, which must be requested by the suspect, takes places at the penal courts in the jail where the suspect is being held, in the presence of a penal judge, a public defender and the prosecuting and defense attorneys. The suspect, who remains behind bars, may question the victim, with the goal of clarifying any contradictory or confusing testimony and coming to an unanimous truth. The presiding judge may ask questions and may also encourage witnesses to rethink or correct their testimonies.

Often, however, actual practices differ from what’s laid out in the law. According to the current constitution, for example, a suspect may be held for a maximum of 48 hours without being charged with a crime, but a 2002 study found that officials adhere to that rule less than half the time. Once a person has been charged, a judge has 72 hours to decide whether a suspect should be tried or released; this limit, too, has been found to be surpassed in more than half of cases.

These abuses, combined with the lack of a proper bail system, mean that many suspects are held without having been given a proper trial: According to a study by the New York-based nonprofit Open Society Institute, as many as 42 percent of Mexico’s inmates, or about 90,000 people, have been held without trial.

Sources:
“Mexico: Procedure for victims of crime to identify the accused; whether the victim must identify the accused in the same room.” Immigration and Refugee Board of Canada, 28 May 2009. http://www.unhcr.org/refworld/topic,4565c225b,4565c25f149,4a7040 bic,0.html
Judicial Reform in Mexico

In June 2008, Mexico passed a monumental amendment to its 1917 constitution that will transform its judicial system from one widely considered arcane and unjust to a system more in line with 21st-century global standards.

In contrast to the “common law” system in place in the United States and elsewhere, in which court decisions are based on legal precedents or prior rulings, Mexico’s current system is a “civil law” arrangement, in which each case is decided individually according to the letter of the law.

After the reform officially goes into effect in 2016, trials will be conducted very differently. Currently prosecutors do not present oral arguments, as U.S. lawyers do, but present their cases in writing, via paperwork. A trial has no jury, and often the judge doesn’t meet the defendant face-to-face — one survey showed that 71 percent of defendants never saw a judge before being sentenced. Judges make their decisions in accordance with a strict code of justice that leaves very...
little room for interpretation, and all evidence is sealed from
the public. After the reform, cases will be presented in court
with oral arguments, creating greater transparency.

Prosecutors’ and judges’ roles will also change in 2016. Cur-
rently, public prosecutors in Mexico are responsible for re-
searching and building cases, and judges often take part in
the gathering of evidence and development of a case. The
reform will help separate the act of investigating a case from
the process of making a final judgment on that case.

Sources:
American Citizen Services: U.S. Consulate General in Tijuana. “Mexico’s

17 October 2009.
http://online.wsj.com/article/SB1000142405274870432200457447549
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2007

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http://www.llrx.com/mexicolegalsystem.htm

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Criticism of the Reform

The judicial reform grew out of President Felipe Calderón’s efforts to crack down on organized crime, one of the major challenges of his term. Since he took office in December 2006, more than 13,500 people have died as a result of violence involving drug cartels. Calderón has been applauded for deploying 45,000 army troops to fight the gangs, but analysts argue that without significant reform to police and court systems, the measures will stall. Without better investigative practices and cooperation from the public, they say, chances of breaking up the drug cartels are slim.

Among the initial bill’s proposals was a measure that would have allowed police and security forces to conduct raids and home searches without permits, but that proposal was removed by Mexico’s lower house of Congress, the Chamber of Deputies, before the bill was passed.

One controversial measure, known as arraigo, did survive, however. Arraigo allows police to detain suspects of organized crime — meaning any crime involving more than three people — for up to 80 days. Many critics claim that the measure undermines due process and are afraid that it will be abused.

Sources:


**Selected People Featured in *Presumed Guilty***

**Antonio “Toño” Zúñiga** – Zúñiga was 27 years old during the shooting of the film. He had been wrongfully convicted of a crime and imprisoned. Before his arrest, he was a computer repairman in the local market, and since his release, he has returned to running an independent computer repair business.

**Eva Guitierrez** – Zúñiga’s girlfriend and now wife. They were married in a group ceremony at the prison.

**Roberto Hernández** – Lawyer with a camera. Hernández uses film to illustrate the shortfalls of the criminal justice system in Mexico. Trained as a lawyer and devoted to criminal justice policy reform in Mexico, Hernández helped draft the June 2008 constitutional amendment that includes a presumption of innocence clause.

**Layda Negrete** – Lawyer with a camera. Trained as a lawyer, Negrete began her career in the federal judiciary in Mexico. She later became a researcher and academic. Negrete uses social science research as a tool for diagnosing problems in the criminal justice system in Mexico. She partners with her husband, Roberto Hernández, to advance criminal justice reform with the use of media.
Selected People Featured in *Presumed Guilty*

**Rafael Heredia** – Defense attorney

**Victor Daniel Reyes Bravo** – Witness for the prosecution and the victim’s cousin

**Hector Palomares** – Judge

**Mario Arrona Salmerón** – Detective

**José Manuel Ortega Saavedra** – Chief detective
Immediately after the film, you may want to give people a few quiet moments to reflect on what they have seen. If the mood seems tense, you can pose a general question and give people some time to themselves to jot down or think about their answers before opening the discussion.

Unless you think participants are so uncomfortable that they can’t engage until they have had a break, don’t encourage people to leave the room between the film and the discussion. If you save your break for an appropriate moment during the discussion, you won’t lose the feeling of the film as you begin your dialogue.

One way to get a discussion going is to pose a general question such as:

• If you could ask anyone in the film a single question, who would it be and what would you ask him or her?
• What did you learn from this film? What insights did it provide?
• Describe a moment or scene in the film that you found particularly disturbing or moving. What was it about that scene that was especially compelling for you?
Legal Practices and the Potential for Reform

- The film notes that in Mexico’s legal system defendants have to prove their innocence rather than the other way around. What are the effects of being “presumed guilty” rather than “presumed innocent”? What are the benefits and drawbacks of each approach?

- When Zúñiga is granted a new trial because his first attorney was unlicensed, his supporters say, “We need a great lawyer willing to work for free.” In your opinion, does socioeconomic status play a role in achieving justice? Why or why not? How can a justice system ensure that everyone is treated equitably, irrespective of financial resources?

- If you were assigned the job of reforming Mexico’s criminal justice system, which specific practices would you recommend changing and why? Which would you change first (i.e., which are the most important to change) and why? Specifically consider who benefits from and who is disadvantaged by the practices employed in the film as follows:

  - During the hearing, the defense lawyer is prevented from asking detectives about material that is already in the case file.
  - Describing his arrest, Zúñiga says, “I had no idea what my rights were.” There is no corollary in Mexico to the Miranda warning used in the United States.
  - Despite a direct request from the defendant, the prosecutor never has to present the grounds on which she is trying Zúñiga.
  - Zúñiga has the opportunity to question directly the witnesses against him.
  - Though a judge is present at Zúñiga’s hearing, 92 percent of defendants never see a judge.
• According to the film, 92 percent of accusations are based exclusively on witness testimony. What are the strengths and weaknesses of such testimony? Under what circumstances are witness statements or accusations likely to be credible and under what circumstances are they dubious?

• What did you learn from the film about the role of cameras in courtrooms? What did the cameras reveal that written transcripts could not? Would you support the presence of cameras in courtrooms for all criminal proceedings? Why or why not?

• Imagine that you are watching an incumbent legislator defend his administration’s crime fighting efforts in a campaign ad that states, “Ninety-five percent of verdicts are convictions.” Would you hear this as a positive achievement or a signal of a problem? What was your reaction when you saw it in the film? What accounts for the different possible ways of interpreting this statistic?

• The film provides a glimpse into prison conditions. What role does treatment of inmates and their families play in the legal system’s capacity to achieve justice? What policies could be introduced to reduce the potential for abuse of inmates and visitors?

• Layda says, “Our justice system is dreadful. A case like this makes me angry. It makes me sad. I lose hope.” What would you say to Layda to restore her hope that the system could be improved? What models would you look to as you work for change?

The Effects of Injustice

• One of the people in the film says of Zúñiga’s unjust incarceration, “We’re all at risk from this.” What do you think he means? How does what happened to Toño put everyone at risk? What is the broader impact on society when citizens do not believe that their justice system is fair?

• We see some of the effects of Zúñiga’s incarceration on his family. What effect do you think having the wrong person convicted might have on a victim’s family?

• On hearing that Zúñiga has been convicted again, his family says, “This is an injustice! Why even bother having laws?” How would you answer that question? How does unjust incarceration lead to an increase rather than a reduction in crime?

• Describing the inmates, the film notes how many of them are young men, “Mexico’s future.” What are the prospects for Mexico’s future if its criminal justice system remains dysfunctional?

• Pressure to suppress drug trafficking and its associated violence have led some people to advocate for institution of the death penalty in Mexico. What light does the film shed on that issue? How has the film influenced your own views on the death penalty?

• Zúñiga says, “Before this I thought like lots of people: If he’s a thief or a rapist, lock him up for 100 years. As long as he isn’t on the streets.” How closely does this resemble your own beliefs about inmates? Did the film challenge your ideas?

• The filmmakers’ response to witnessing injustice was to make documentaries and join the defense team. When you have witnessed injustice, what has your response been? How might you respond in the future? How does the fact that the filmmakers became such an integral part of the story influence their credibility? What are the benefits and drawbacks of filmmakers becoming subjects of their own films?

Additional media literacy analysis questions are available on POV’s website: pbs.org/pov/educators/media-literacy.php
• Find ways to support organizations that work on issues around criminal justice, such as Lawyers with a Camera, founded by the filmmakers of Presumed Guilty. For information, visit http://www.presuntoculpable.org/en/cause/

• Join efforts to free innocent prisoners. In the United States, local affiliates of the Innocence Project can provide suggestions on how to start or where to find support for ongoing initiatives.

• Work with a local law school or bar association to stage a debate on whether or not to require cameras in every courtroom.

• Convene a screening of Presumed Guilty as part of a teach-in on the pros and cons of the death penalty, especially in the context of discussions about how to deal with cases involving Mexican drug traffickers.
FILM-RELATED WEB SITES

Original Online Content on
POV Interactive (www.pbs.org/pov)

POV’s Presumed Guilty companion website
www.pbs.org/pov/presumedguilty

To further enhance the broadcast, POV has produced an interactive website to enable viewers to explore the film in greater depth. The companion website to Presumed Guilty offers a streaming video trailer for the film; an interview with filmmakers Roberto Hernández, Geoffrey Smith and Layda Negrete; a list of related websites, organizations and books; a downloadable discussion guide; and the following special features:

• Watching Presumed Guilty: Experts react to the film and talk about different aspects of Zúñiga’s case and the Mexican justice system

Film-Related Links

PRESUMED GUILTY
www.presumedguiltythemovie.com

The filmmakers’ website for Presumed Guilty contains additional content about the film, a list of upcoming screenings and a petition intended to stop the presumption of guilt in Mexico.

Prison Reform in Mexico

TIME: “THINK CALIFORNIA’S PRISONS ARE A PROBLEM? LOOK AT MEXICO’S”
www.time.com

In this article, Ioan Grillo exposes the issues inside Mexico’s prisons and highlights the growing strains on a penitentiary system that is being flooded by new inmates locked up as part of President Felipe Calderón’s war on drug cartels. Links to pictures of the drug wars and a video of a prison are also available. (August 14, 2009)

COUNCIL ON HEMISPHERIC AFFAIRS (COHA): “THE WRETCHED PLAGUE OF MEXICO’S CRIPPLED PRISON SYSTEM”
www.coha.org

The Council on Hemispheric Affairs (COHA) is a nonprofit, tax-exempt, independent research and information organization that promotes the common interests of the hemisphere, raises the visibility of regional affairs and increases the importance of the inter-American relationship. COHA research associate Sabrina Starke’s post entitled “The Wretched Plague of Mexico’s Crippled Prison System” draws attention to increasing abuse of power and corruption among Mexican police and their inability to investigate crime effectively. The post also illustrates the toll this situation is taking on inmates in Mexican prisons.

THE NEW YORK TIMES: “LIFTING THE VEIL ON AIDS IN A MEXICAN PRISON”
www.nytimes.com

In this article, Marc Lacey examines the conditions of inmates and the risks they face in prisons due to numerous unchecked, often banned activities that heighten the chance of inmates contracting HIV. (August 25, 2008)
Criminal Justice in Mexico

JUSTICE IN MEXICO PROJECT
www.justiceinmexico.org

The Justice in Mexico Project is a research project of the Trans-Border Institute (TBI) at the University of San Diego that is dedicated to the rule of law and justice reform in Mexico. The Justice in Mexico Project coordinates and disseminates research regarding three major components of the rule of law: order; accountability; and equal access to justice. The website supplies the latest in justice news and resources and reports focusing on how to keep the state and its representatives accountable under the law.

AMNESTY INTERNATIONAL: “MEXICO: INJUSTICE AND IMPUNITY: MEXICO’S FLAWED CRIMINAL JUSTICE SYSTEM”
www.amnestyusa.org

In this report, Amnesty International draws on the experiences of Amnesty International representatives, representatives of federal and various state governments, prosecutors, defense lawyers, members of the judiciary, non-governmental organizations and victims of human rights abuses and their families to identify the deep flaws in the Mexican criminal justice system. This report provides real case studies and covers Amnesty International’s recommendations to the Mexican government.

HUMAN RIGHTS FIRST
www.humanrightsfirst.org

Human Rights First builds respect for human rights and the rule of law by utilizing creative coalition building, insider advocacy, litigation, research and reporting and public advocacy. The group’s Mexico Policing Project aims to uphold the due process of law and to improve police accountability. The website offers links to letters from Human Rights First to Mexico City’s public security secretary and more details about the group’s approach to reform in Mexico.

INNOCENCE PROJECT
www.innocenceproject.org

The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and to reforming the criminal justice system to prevent future injustice. As a clinic, law students handle case work while supervised by a team of attorneys and staff.

CHANGE.ORG
http://criminaljustice.change.org

Change.org is an online hub for social change that hosts online communities for 20 major causes, including prison reform. With a team of 100 expert writers and 3,000 nonprofit partners, it serves as the central platform for promoting movements for social change on the Web. The section on prison overcrowding provides information about broken prison systems around the globe and how governments are working to address the issue.

THE VERA INSTITUTE OF JUSTICE
www.vera.org

The Vera Institute of Justice combines expertise in research, demonstration projects and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety. Vera is an independent, nonpartisan, nonprofit center for justice policy and practice. The website hosts a blog that was created to advance discussion about issues related to Vera’s work; the resources section features interviews with leading figures in the field.

THE CRIME REPORT
http://thecrimereport.org

The Crime Report is a unique news and multimedia information and networking resource for the changing contemporary world of crime and justice. Designed for those who want to probe beyond the daily crime headlines and political rhetoric, it is the nation’s only comprehensive guide to all facets of the criminal justice system. It is a collaborative effort by two national organizations that focus on encouraging quality criminal justice reporting: the Center on Media, Crime and Justice, the nation’s leading practice-oriented think tank on crime and justice reporting, and Criminal Justice Journalists, the nation’s only membership organization of crime-beat journalists.
THE SENTENCING PROJECT

www.sentencingproject.org

The Sentencing Project is a national organization working for a fair and effective criminal justice system by promoting reforms in sentencing law and practice and alternatives to incarceration. It was founded in 1986 to provide defense lawyers with sentencing advocacy training and to reduce the reliance on incarceration. As a result of The Sentencing Project’s research, publications and advocacy, many people know that this country is the world’s leader in incarceration, that one in three young black men is under control of the criminal justice system, that 5 million Americans can’t vote because of felony convictions and that thousands of women and children have lost welfare, education and housing benefits as the result of convictions for minor drug offenses.

From PBS/NPR

FRONTLINE: “REQUIEM FOR FRANK LEE SMITH”

www.pbs.org

This Frontline documentary tracks the legal case of Frank Lee Smith. After spending 14 years on death row, Smith was finally cleared of charges of raping and murdering an 8-year-old girl. However, the DNA based exoneration came 10 months too late. Smith died of cancer in prison in December 2000. Frontline producer Ofra Bikel explores the reasons Smith ended up on death row for a crime he didn’t commit.

NEWSHOUR: “TURF BATTLES IN MEXICAN CITY PROMPT POLICING CHANGES”

www.pbs.org

In this article, Max Brett reports on the federal government taking charge of policing the Mexican city of Ciudad Juarez for the third time in two years. (April 9, 2010)
DISCUSSION GUIDE

Presumed Guilty

HOW TO BUY THE FILM

To order Presumed Guilty, go to www.presumedguiltythemovie.com

Produced by American Documentary, Inc. and beginning its 23rd season on PBS in 2010, 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.

Major funding for POV is provided by PBS, The John D. and Catherine T. MacArthur Foundation, National Endowment for the Arts, The Educational Foundation of America, New York State Council on the Arts, New York City Department of Cultural Affairs, The Fledgling Fund, FACT and public television viewers. Funding for POV’s Diverse Voices Project is provided by the Corporation for Public Broadcasting, The Andy Warhol Foundation for the Visual Arts, and the Rockefeller Brothers Fund. Special support provided by the Academy of Motion Picture Arts and Sciences. POV is presented by a consortium of public television stations, including KCET Los Angeles, WGBH Boston and THIRTEEN in association with WNET.ORG.

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American Documentary, Inc. www.amdoc.org

American Documentary, Inc. (AmDoc) is a multimedia company dedicated to creating, identifying and presenting contemporary stories that express opinions and perspectives rarely featured in mainstream media outlets. AmDoc is a catalyst for public culture, developing collaborative strategic engagement activities around socially relevant content on television, online and in community settings. These activities are designed to trigger action, from dialogue and feedback to educational opportunities and community participation. Simon Kilmurry is executive director of American Documentary | POV; Cynthia Lopez is executive vice president.

POV Community Engagement and Education

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Front cover: Antonio “Toño” Zuñiga, in a Mexican prison after being wrongfully accused of murder.
Photo courtesy of Abogados con Cámara (Lawyers with Cameras)