

# The Legal Work Defending Independentistas in the U.S.

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## The National Lawyer's Guild Work Defending Independentistas in the U.S.

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As a young lawyer relatively new to politics and prisons, my work with the Attica Brothers and with Rafael Cancel Miranda and the other Nationalist political prisoners in the early 1970's, changed my life forever. In the case of the Puerto Rican political prisoners, their courageous commitment to the self-determination and independence of their country, and their warmth and humanity, despite the hardships of two decades in prison, greatly influenced the course of my own work as a lawyer over the next decades. It was the example of these extraordinary fighters, along with many other political prisoners with whom I have worked, that has fueled my continuing dedication to work for justice. To all past and present political prisoners I owe a deep debt of gratitude.

The National Lawyers Guild, which will be celebrating its annual convention in Puerto Rico this October, has a long history defending Puerto Rican militants and activists. Much of the beginnings of this work can be traced to Guild lawyers from the People's Law Office (PLO) in Chicago meeting Rafael Cancel Miranda in the early 1970's while he was a prisoner at Marion Federal Prison. It was through those prison visits with Rafael that many of us first learned of the history of the struggle against U.S. colonialism over Puerto Rico and the heroes of this resistance.

Through Rafael, Guild lawyers from the PLO learned of the four other Puerto Rican Nationalists also incarcerated in U.S. prisons since the 1950's, - Lolita Lebron, Irvin Flores, Andres Figueroa Cordero, and Oscar Collazo. Lawyers from the PLO visited each of the prisoners - Lolita at Alderson, West Virginia; and Irvin, Oscar and Andres in Leavenworth, Kansas - and developed a lawsuit challenging some of their conditions of confinement, restricted visits, denial of access to Claridad - the independence movement weekly newspaper - and their continued incarceration. While the Nationalist Prisoners did not recognize the right of the U.S. to hold them as criminals, and refused to directly ask the U.S. courts for their freedom, their family members and independence leaders assumed the role of plaintiffs in the lawsuit and petitioned for their freedom.

Guild lawyers joining with lawyers from Puerto Rico filed the case in Washington D.C. in 1976, as part of a revitalized international political campaign to "Free the Five." The case was assigned to the famous Watergate Judge, John Sirica, who severed the cases and transferred them to four separate federal district courts, near the respective prisons where the Nationalists were held. By this time Andres was suffering from colon cancer and was incarcerated in the Federal Medical Prison in Springfield, Missouri.

The Nationalists prisoners decided that the lawyers should pursue the case on behalf of Andres, and within a year, fueled by a strong political campaign, Andres was given a medical clemency and released. At the same time, Guild lawyers from Chicago prepared a petition to the United Nations Human Rights Commission calling for the freedom of the Nationalists, and also appeared on their behalf before the United Nations Decolonization

Committee, whose 1978 resolution called for their freedom.

In September of 1979, an international campaign, with the support of broad sectors of the people of Puerto Rico including the former governor, Hernandez Colon and the Catholic Bishop Antulio Parilla, successfully pressured President Carter to grant the unconditional freedom of the remaining four. Guild lawyers, with lawyers from Puerto Rico and family members, went to the prisons where they were held, and escorted them first to Chicago and New York where they were greeted by large crowds, and then home to Puerto Rico where thousands received them at the airport.

### **Grand Jury Work**

Even before the release of the Nationalists, Guild lawyers were involved in representing independentistas subpoenaed to federal grand juries in New York and Chicago investigating the Fuerzas Armadas de Liberacion Nacional (FALN), a U.S. based clandestine Puerto Rican group which emerged in 1974 and which carried out bombings and other militant actions calling for the freedom of the Nationalists and the end to U.S. colonialism.

Lureida Torres from Puerto Rico, and later Maria Cueto, the executive director of the U.S. Episcopal Church Hispanic Affairs Commission, and her assistant Raisa Nemekin, and three brothers Julio, Luis and Andres Rosado, were subpoenaed in New York. In Chicago, several leaders of the Puerto Rican community, Jose Lopez, Myrna Salgado, Steven Guerra and Roberto Caldero were subpoenaed, as well as two Mexicano activists, Ricardo Romero and Pedro Archuleta from the Southwest. Guild lawyers represented all of them. Through creative lawyering, including challenging the use of secret illegal electronic surveillance, the lawyers were able to delay their inevitable political detention, thus reducing the time they were imprisoned for civil contempt for their refusal to testify before the grand jury. The grand jury resisters took a position of non-collaboration with the repressive use of the grand jury, and hundreds of people mobilized to support them. Later two independence activists, Carlos Noya and Federico Cintron, were subpoenaed to a New York grand jury. Defended by lawyers from Puerto Rico and the Guild, they also refused to collaborate and were imprisoned for civil contempt.

Several years later, in an unprecedented act of political repression, five of the grand jury resisters, Julio Rosado, Riccardo Romero, Andres Rosado, Maria Cueto and Steven Guerra, after their release from civil contempt, were indicted in Brooklyn for criminal contempt based on their prior refusal to testify, and put on trial. Facing a possible sentence of up to life in prison, they were represented by Guild lawyers. They were convicted after a hard-fought political trial, during which the government argued that they were aiding terrorism by not testifying. The government asked for a 15 year sentence, showing the judge pictures of victims from FALN bombings. Each one of the five was sentenced to 3 years in prison.

In 1983, Guild lawyers were also involved in the case of Alberto de Jesus, a young man who had left Puerto Rico to avoid a grand jury investigating the Puerto Rican clandestine movement. He was arrested in Green Bay, Wisconsin, for using a false social security card. Living in Wisconsin, Alberto had earned the respect and admiration of many human rights activists and people from the religious community, who traveled to Milwaukee to support him at his sentencing.

Part of Guild work around the grand jury and the Puerto Rican independence movement included public education since many people in the United States were not aware of the colonial case of Puerto Rico and the grand jury's use against the independence movement.

### **THE FALN AND SEDITIOUS CONSPIRACY**

In 1979, William Guillermo Morales was arrested after an explosion in an apartment in Queens, accused of membership in the FALN, and charged with possession of explosives. He was first put on trial in federal court in Brooklyn. Represented by Guild lawyers, he

proclaimed he was a Prisoner of War fighting against the crime of colonialism, and demanded to be transferred to an international forum. This was the first time that a Puerto Rican asserted international law as a defense in the U.S. courts. The court denied Morales' claim, but his Guild lawyers argued that he was indeed a prisoner of war and that the real crime was the U.S. colonial control over Puerto Rico. Morales was sentenced to 10 years. Immediately following his conviction, he was put on trial in New York State court for similar charges and given an additional 55 years.

Guild lawyers would again be involved in defending Morales after his convictions. After a daring escape from a New York prison hospital, he was later arrested in Mexico, where he was tortured and imprisoned. Guild lawyers worked with progressive Mexican counsel and helped to oppose U.S. efforts to extradite him to the United States. A successful political campaign to fight the extradition allowed Morales to go to Cuba, where he was granted political asylum.

In April of 1980, 11 Puerto Ricans were arrested in Evanston, Illinois and accused of being part of the FALN. They were first tried in state court and sentenced to terms of 8 to 30 years. The U.S. then indicted them for seditious conspiracy, the same charge lodged against Albizu Campos and other Nationalist Party members in the 1930's and in the 1950's. Like Morales, the accused FALN prisoners, Carlos Alberto Torres, Carmen Valentin, Dylcia Pagan, Alicia Rodriguez, Lucy Rodriguez, Elizam Escobar, Ricardo Jimenez, Luis Rosa, Adolfo Matos, and Alfredo Mendez also asserted their right to be treated as POWs. Assisted by Guild lawyers who acted as legal advisors, since the accused refused to participate in what they considered an illegal trial, the accused filed an extensive document supporting their claim under international law. The lawyers also filed a petition with the U.N. Human Rights Commission and raised their case in international fora in Malta, Barcelona and Cuba. The federal prosecution resulted in grossly disproportionate sentences ranging from 55 to 90 years, with the judge lamenting that he could not give them the death penalty.

During the Illinois state court proceedings, Alicia Rodriguez was gagged and beaten for speaking out about the illegal nature of their criminal prosecution. A Guild lawyer who condemned this brutal, demeaning treatment was held in contempt, and immediately taken into custody until bail was obtained from the Appellate Court. The judge also threatened to throw another lawyer out the window of his chambers.

One of those arrested in Evanston, Maria Haydee Torres, was taken to New York and tried for a bombing at the Mobil Oil Building in Manhattan. She was physically brutalized in the course of being forced to participate in a line-up, witnessed by a Guild lawyer, refused to participate in her trial, and sat in a holding center with her legal consultant, a Guild lawyer, listening to her trial over special speakers. She was given a life sentence.

The following year, Oscar Lopez Rivera was arrested and charged with the same seditious conspiracy. While he assumed the same POW position, Oscar, advised by Guild lawyers, confronted one of those arrested in Evanston, Alfredo Mendez, who the FBI, through isolation and promises of leniency, had made into a government witness.

In July of 1983, there were four more arrests of accused FALN members in Chicago – Alejandrina Torres, Edwin Cortes, Alberto Rodriguez and Jose Rodriguez, also charged with seditious conspiracy. The government, based on information provided by Mendez, located safe houses in private apartments rented under false names, and placed secret cameras and filmed bomb-making activities. Guild lawyers convinced the judge to suppress this evidence as illegally obtained without any legal statutory authorization. The government took an interlocutory appeal, and the appeals court found that, regardless of the absence of any authorizing law, the government had the inherent authority in fighting terrorism to enter a private dwelling and place cameras there. At trial, one of the defendants, represented by Guild lawyers, presented a legal defense, while the three others, with Guild lawyers acting as legal consultants, took the POW position. All were convicted. Jose Rodriguez who presented a legal defense was given probation, and the three others were

sentenced to 35 years.

The Guild lawyers who represented the POWs were criticized by many members of the bar, including other Guild lawyers. Many asked, “Why didn’t the lawyers convince the accused to make a legal defense?” And “by not presenting a traditional legal defense weren’t these lawyers abdicating their responsibility as lawyers?” Despite this criticism, the lawyers for the POWs believed that they were acting in the highest tradition of radical lawyers, following the political direction of their clients and using the courtroom to put forth the legal/political position of their clients. Nonetheless, these Guild lawyers not only had to endure the negative opinions of their colleagues, but also suffered attacks on their competency and reputation. Creative lawyering, however, had established the international law framework to help build a campaign for their release.

The negative fall-out against the lawyers was nothing compared to the treatment that the political prisoners suffered in U.S. prisons. They were placed in special sensory deprivation isolation units, including the Alderson Cardinal Unit, Lexington Woman’s High Security Unit, U.S. Prison at Marion and ADX Florence, Colorado. They were subjected to discriminatory and humiliating treatment, sensory deprivation isolation, and arbitrarily denied visits, literature and mail; in other words, denied contact with their political movement, family and supporters. Guild lawyers were involved in campaigns to end the torturous treatment. In the case of the Lexington unity Guild lawyers, along with other attorneys, brought a lawsuit challenging the treatment of similarly situated political prisoners and with the support of a public campaign eventually closed down the Lexington unit.

#### **LOS MACHETEROS CASE IN CONNECTICUT**

On August 30, 1985, hundreds of FBI agents raided numerous homes and workplaces in Puerto Rico, arresting and transporting out of the country to Connecticut accused members of Los Macheteros, (Sugarcane Cutters), a highly successful Puerto Rico based clandestine group, charging them with involvement with the expropriation of 7 million dollars from a Wells Fargo depot in Hartford. Working with lawyers from Puerto Rico, Guild lawyers from New York, Connecticut, Boston and Chicago organized a joint legal defense team. Discovery revealed that in the course of months of secret investigation of the independence movement, the FBI had illegally recorded hundreds of personal conversations and had seized thousands of political books, pamphlets and personal diaries. Evoking claims of terrorism, the government used a new “preventive detention” law to deny bail to many of those arrested. While some were detained as long as three years, Guild lawyers were successful in challenging the indefinite pre-trial detention of those arrested, ultimately obtaining the release of all the accused on bail. The lawyers were also able to have much of the electronic surveillance suppressed. Guild lawyers formed part of the defense team that represented those accused at trial, and also help to negotiate substantially reduced sentences for those who did not go to trial. Guild lawyers also represented on appeal those who had been convicted at trial.

During the court proceedings in the Machetero case in Connecticut, another case against independentistas was taking place in Chicago. In 1986, several community organizers were charged with conspiracy to free Oscar Lopez from Leavenworth federal prison, resulting from an FBI sting operation designed to ensnare community people active in the campaign for the release of the FALN prisoners. Guild lawyers represented the accused at trial and on appeal. Oscar Lopez was sentenced to an additional 15 years and transferred to super max prisons for the next 12 years, and his codefendants Jamie Delgado and Dora Garcia were sentenced to 4 and 3 years respectively.

The case was emblematic of the FBI’s continuing attack on Chicago’s Puerto Rican community. The FBI raided the Puerto Rican Cultural Center and Pedro Albizu Campos Alternative High School, with agents searching the community institutions for hours. The raid was part of continuing efforts by the U.S. government to frighten community members

by labeling the Center and school as “terrorist” institutions. Guild lawyers stood in solidarity with the Puerto Rican community condemning these repressive actions.

In yet another case in Chicago, professor Jose Solis Jordan was tried in 1999 for planting two pipe bombs outside a military recruiting center. Represented by Guild lawyers, the defense centered on the FBI’s use of an informant/provocateur to infiltrate the Puerto Rican community and ensnare people active in the campaign for the release of the political prisoners. Solis was convicted and sentenced to 4 years in prison.

#### THE CAMPAIGN TO FREE THE FALN PRISONERS

In 1993, Guild lawyers working closely with the Puerto Rican community in the U.S. and the Puerto Rico based human rights campaign filed a petition for executive clemency on behalf of the FALN and some of the Machetero prisoners and began to garner support for their release in Puerto Rico, the U.S. and internationally. In 1999, President Clinton offered to commute their sentences, declaring that “the prisoners were serving extremely lengthy sentences—in some cases 90 years—which were out of proportion to their crimes.” The president said he was moved by the support from “various Members of Congress, a number of religious organizations, labor organizations, human rights groups, and Hispanic civic and community groups” along with “widespread support across the political spectrum within Puerto Rico,” and thousands of letters requesting their release. He also indicated he was moved by “worldwide support on humanitarian grounds from numerous quarters,” pointing specifically to former President Jimmy Carter, Nobel Prize Laureate South African Archbishop Desmond Tutu, and Coretta Scott King.

As the prisoners consulted about whether to accept the offered commutations, which did not include all of them, and which provided for parole-type conditions upon release, the right wing set about to try to sabotage the release of the prisoners. Several committees in both houses of the legislature convened hearings, and both houses overwhelmingly approved a joint resolution condemning Clinton’s offer, accusing him of “making deplorable concessions to terrorists and placing in danger the national security in conceding clemency to Puerto Rican ‘terrorists.’”

A month later, after more than 100,000 Puerto Ricans marched to show support, the prisoners’ agreed that those eligible for immediate release would accept the offer, while Oscar López Rivera, who would not have been eligible for release for another 10 years, would remain in prison in solidarity with those not included in the offer.

On September 10, 1999, eleven women and men became former political prisoners, emerging from prison to be received with a hero’s welcome, in Chicago, where two returned to their families and communities, in San Juan, were nine went to live. With the love and support of the Puerto Rican people, they all integrated into civil society, and have since lived productive, law-abiding lives, just as the previous generation of Puerto Rican political prisoners.

In 2010, Carlos Alberto Torres, represented by a Guild lawyer, was released on parole after having served 30 years in prison. Haydée Torres was also released after serving 30 years. Today Oscar López Rivera, represented by a Guild lawyer, is the only remaining prisoner from the Chicago FALN cases. After 32 years behind bars, the call for his release enjoys even more support than that garnered in 1999, including numerous NLG resolutions.

Today, Guild lawyers are instrumental in organizing and advising the international campaign to free Oscar Lopez Rivera. They have been at the forefront in helping to obtain the support of many sectors of society throughout the world. They continue to testify annually before the U.N. Decolonization Committee, representing the NLG International Committee, and have lent their advice and expertise to assist lawyers representing new grand jury resisters and two fugitive Macheteros, Norberto and Avelino Gonzalez Claudio, arrested and imprisoned over the last several years. Also Guild lawyers were involved in

helping to expose the 2005 FBI assassination of Machetero leader Filberto Ojeda Rios.

In all of this work, the National Lawyers Guild and Guild lawyers have stood in solidarity with the Puerto Rican people in their fight against political repression and their struggle for independence and self-determination.

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NOTES:

1 This article does not cover the work of the Puerto Rico Legal Project, whose legal support for the independence movement will be discussed in a separate article.

2 The author apologizes for any Guild work on behalf of the independence movement which was unintentionally left out.

3 The Guild Lawyers involved included Michael Deutsch, Mara Siegel and Dennis Cunningham. The lawyers from Puerto Rico included Emilio Soler Mari, Luis "Willie" Abreu and John Passalacqua.

4 Instrumental in the coordination of this campaign was Nelson Canals.

5 Among the Guild lawyers involved in the representation of grand jury witnesses were Elizabeth M. Fink, Margaret Ratner-Kunstler, Susan B. Tipograph, Martin Stolar and Doris Peterson from New York; Jose Antonio "Abi" Lugo from Puerto Rico; Michael Deutsch, Dennis Cunningham, Mara Siegel, and Kingsley Clarke from Chicago.

6 Non-collaboration with U.S. federal grand juries has been a continuing principal of the independence movement. The FBI conceded that the refusal of independentistas to testify before grand juries had stymied their investigation into the FALN.

7 See e.g. Deutsch, *The Improper Use of the Federal Grand Jury: An Instrument for the Internment of Political Activists*, 75 *Journal of Criminal Law and Criminology*, 1159 (Winter 1984); Berkan, *The Federal Grand Jury: An Introduction to the Institution, Its Historical Role, Its Current Use and the Problems Faced by the Target Witness*, 17 *Revista Juridica Del La Universidad Interamericana* 103 (1984)

8 William was represented by Michael Deutsch and Elizabeth M. Fink.

9 In state court William was represented by Susan B. Tipograph. After Morales' escape, Attorney Tipograph was the subject of intensive FBI surveillance and harassment.

10 Among the Guild lawyers who acted as legal advisers were Michael Deutsch, Mara Siegel, Edward Voci, Kingsley Clarke and Dennis Cunningham.

11 The lawyer, Mara Siegel, had her contempt sentence reversed by the Appellate Court, but was later reinstated by the Illinois Supreme Court.

12 Involved with the suppression challenge were Guild lawyers, David Thomas and Michael Deutsch. In addition, Melinda Power and Dennis Cunningham acted as legal advisers.

13 Jan Susler, Elizabeth Fink, Michael Deutsch, Mary O'Melveny, and Adjoa Aiyertoro from the ACLU, National Prison Project comprised the legal team

14 Among the Guild lawyers involved were William Kunstler, Leonard Weinglass, Ronald Kuby, and Richard Harvey from New York; Linda Backiel then from Philadelphia; Michael Avery from Boston; John Schoenhorn, Richard Reeve, Diane Polan, John Williams and Margaret Levy from Connecticut; Michael Deutsch from Chicago; and Juan Ramon Acevedo

and Rafael Anglada from Puerto Rico.

15 The Guild lawyers included Carol Brook, Jeffrey Haas, and Jan Susler.

16 Solis was represented by Linda Backiel and Jed Stone.

17 In 1995, Guild lawyers also assisted independence leader Juan Mari Bras, in his effort to renounce his U.S. citizenship and affirm his right to his Puerto Rican nationality, and to reject the U.S. citizenship that was imposed on Puerto Ricans against their will by an act of the U.S. Congress. After months of delay, pressure by the independence movement assisted by Guild lawyers forced the U.S. government to accept Mari Bras' renunciation.

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