



The judge who indicted a dictator

A landmark film reveals the overturning of Augusto Pinochet's reign by a Chilean judge



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On May 4, 2008, *The Judge and the General* premiered at the San Francisco International Film Festival. The film tells the story of Chilean Judge Juan Guzmán's prosecution of Augusto Pinochet, the Chilean army general who staged a CIA-supported coup d'état against the democratically elected government of Salvador Allende in 1973, plunging Chile into a repressive dictatorship that lasted for 17 years.

Bay area filmmaker, Elizabeth Farnsworth, made the documentary with Patricio Lanfranco, a Chilean journalist. Farnsworth worked on a film in Chile for four months during Allende's election and has since continued to cover the region as a journalist. "Chile was

a democracy with a very tolerant political structure," Farnsworth said. "No one thought a coup could happen there. But then, I never thought a U.S. president would condone torture."

Lanfranco said Pinochet's coup fundamentally altered Chilean society. "I remember a country where solidarity, humanity, and friendship were the top values," said Lanfranco. "After the coup, it became money and power. Society gave up its riches to private hands. Power means impunity – that's why it was so important for the truth to come out."

A report by Amnesty International notes that two commissions created after the Pinochet regime "recorded the 'disappearance,' extrajudicial execution or death under torture of 3,197 people between 1973

The California Supreme Court and judicial independence

The California Supreme Court's landmark decision on May 15, 2008 affirming the right of same-sex couples to marry – like Chilean Judge Juan Guzmán's prosecution of Augusto Pinochet – demonstrates the crucial importance of judicial independence.

In her concurring opinion, Justice Joyce Kennard noted that "[t]he architects of our federal and state Constitutions understood that widespread and deeply rooted prejudices may lead majoritarian institutions to deny fundamental freedoms to unpopular minority groups, and that the most effective remedy for this form of oppression is an independent judiciary charged with the solemn responsibility to interpret and enforce the constitutional provisions guaranteeing fundamental freedoms and equal protection."

The Court based its decision, in part, on another groundbreaking ruling it issued 60 years ago, when it became the first appellate court in the nation to recognize the right to interracial marriage in *Perez v. Sharp* (1948) 32 Cal.2d 711.

The fundamental right to marry should not be up for popular vote. It should not be denied to gay and lesbian people simply because it always has been. By that logic,

women should never have been granted the right to vote, and the Perez case was wrongly decided.

As Chief Justice Ronald George aptly noted, "History alone is not invariably an appropriate guide for determining the meaning and scope of this fundamental constitutional guarantee."

Judicial independence is not easy or comfortable to uphold. The courage of California's Supreme Court, like the courage of Judge Guzmán, deserves our respect and support. As Administrative Law Judge Joe Ragazzo points out in the accompanying article, the integrity of our profession is at stake.

Permit me to go one step further and suggest that, as lawyers, we have a special role to play in ensuring that the fundamental right to marry is not stripped anew from gay and lesbian people this November through an effort to place an initiative on the ballot that would amend our state's constitution to ban same-sex marriage. To learn more about how you can help, and to read more about the Supreme Court's historic decision, please visit the National Center for Lesbian Rights at www.nclrights.org.

— Michele Magar



and 1990.” (*Chile: Testament to Suffering and Courage*, page 2, December 2001, available at <http://www.amnesty.org/en/library/asset/AMR22/014/2001/en/dom-AMR220142001en.pdf>).

An unlikely hero

The Judge and the General portrays Guzmán as an unlikely hero. Born into an aristocratic family, he initially supported Pinochet, believing that the coup was needed to calm the political upheaval that followed the 1970 election of Allende, Chile’s first Socialist president. After the coup, Pinochet dissolved the Chilean Constitution and Congress and declared himself “Supreme Chief of the Nation.” A few months later he changed his title to “President.”

Guzmán’s support for Pinochet began to erode a few years after the coup, when he worked for judges who ruled on habeas corpus petitions brought by family members on behalf of relatives who had disappeared or died during Pinochet’s rule. As the film relays, some 10,000 petitions were filed. Nearly all were denied.

Condemning the judges

Two days after the film premiered, Guzmán reflected on his experience. “The judges were cowards; they didn’t want to show themselves to be opposed to the government,” said Guzmán. “They faced no risk of death or imprisonment, just career repercussions. As judges, we would never have been killed or put in prison because we were too important to the dictatorship. They wanted their careers and they thought the regime would last forever.”

Guzmán never witnessed any angst or remorse from judges who denied the habeas corpus petitions. “They never showed themselves to be anything but harsh, even in private,” said Guzmán. “They laughed about these people, said they were communists who were hurting the country. They didn’t even think about the harm. About 10 habeas corpus petitions were granted, but only in cases that would have no political impact.”

In 1980, Pinochet organized a national referendum to replace the nation’s Constitution with a new one that solidified his position by granting new powers to the presidency and creating an eight-year term of office. The vote in favor of the new Constitution was contested by the political opposition, which called it a result of electoral fraud.

In 1988, Pinochet lost his bid for re-election. However, he remained Commander-in-Chief of the army, a position which granted him immunity from prosecution. Before he stepped down from power in 1998, he became Senator-for-Life, a position created under the 1980 Constitution that guaranteed him immunity from prosecution for the rest of his life.

The legal process takes hold

Despite that guarantee, on January 12, 1998, human rights lawyers in Chile filed the first of what would amount to more than 70 lawsuits against Pinochet. Guzmán was selected via judicial lottery to hear the charges against the former dictator. Because he was known as a conservative judge, Guzmán said Chileans expected a whitewash. “At first, witnesses wouldn’t testify,” said Guzmán. “When they saw we were really investigating, they realized we were serious.”

On October 12, 1998, while Pinochet was visiting London, Spanish judge Baltasar Garzón issued an arrest warrant that charged the former dictator with the deaths and torture of Spaniards who lived in Chile during Pinochet’s rule. Outside his nation, Pinochet’s immunity from prosecution could not protect him. Pinochet was placed under house arrest, but England refused Spain’s request for extradition after Pinochet’s lawyers argued that their client was too ill to be tried. “England didn’t help international justice,” said Guzmán. “It acted like an ostrich with its head in the sand.”

“What helped was Pinochet’s imprisonment in the UK,” said Guzmán. “If we

would have been the first ones to imprison him, there would have been people killed – the military had threatened a coup if he was imprisoned. Garzón’s work cleared the way for justice in Chile.”

The loss of immunity

On March 2, 2000, United Kingdom Home Secretary Jack Straw declared that Pinochet was free to leave. Pinochet boarded a flight for Chile and arrived home the following day.

Three days later, Guzmán asked an appeals court in Santiago to lift Pinochet’s immunity. On June 6, 2000, the court agreed. Its decision was upheld by Chile’s Supreme Court on August 2, 2000.

On December 1, 2000, Guzmán charged Pinochet with kidnapping. Guzmán continued to pursue human rights charges against Pinochet until he retired from the judiciary in May 2005.

Pinochet died on December 10, 2006, while awaiting trial. Although Pinochet was never convicted, Guzmán’s investigation led to subsequent prosecutions against military officers for human rights abuses committed during Pinochet’s rule.

No regrets

Guzmán said he did not regret his effort to bring Pinochet to justice, despite the death threats he and his family endured along the way. “I wondered if my family would be killed, but just for the first six months,” said Guzmán. “Then it became normal.”

“I was a boxer as a young man,” Guzmán continued. “You get afraid prior, but once you’re in the ring, you lose your fright. The six-and-a-half years I had these cases were the happiest years of my life.”

Guzmán said the veneer of normalcy that marked those years also existed during Pinochet’s rule, when torture, murders and disappearances were rampant. “These acts were evil,” Guzmán said. “You think they were done by mad



people, but they were done by ordinary people who have lunch, watch TV with their wife, and spend Sundays with their kids going swimming in the pools on the prison grounds, where the prisoners they had tortured the night before can hear them.”

Guzmán explained that his own reluctance to believe atrocities were being committed was largely due to his social class. “I lived in a golden bubble,” Guzmán said. “But my orientation began to change when I lived in the north of Chile for a week with a very poor family. I saw how they ate, and the solidarity between neighbors who shared food to survive. I realized that most judges don’t know how people live.”

Learning how the rest of the world lives

The experience set Guzmán apart from his peers, and the lessons he learned helped him elicit painful memories from people who witnessed the atrocities committed under Pinochet’s rule. “Judges are like gods in Chile,” said Farnsworth. “No one had ever treated the families of the disappeared with respect. Guzmán listened.”

In the film, the camera captures a scene where a witness lies down in the dirt to show how he hid,” said Farnsworth. “Afterwards Guzmán picked up his hat and dusted him off. He showed respect.”

In addition to seeing how poor people live, Guzmán believes judges should learn about day to day life inside prisons. “Judges don’t know what it means to be in jail,” Guzmán said. “They should spend a week in a cell to see the system from the inside and understand what it means to be deprived of liberty. It’s too easy for judges to sentence people, to apply harsh penalties, and sometimes they do it just to show that they are harsh on crime.”

“For example, in my country many Indians are unhappy with the way they

are treated under the law. They consider themselves a people with their own beliefs, customs and traditions. They don’t want a separate state, but they want their characteristics respected – they want to continue to live on the land as they have for 10,000 years.”

“If they consider themselves deprived of their land, and the person occupying it has a wheat field, they may burn it. If you apply ordinary law, they’d face a sentence of 301 to 540 days. But instead they are labeled as terrorists, and are sentenced to 10 years in prison,” said Guzmán.

Administrative Law Judge Joseph Ragazzo, who viewed the film, said similar problems exist in America. “We’ve got the same golden bubble problem here in the way legal representation and justice is doled out in our society,” said Ragazzo. “When I was in law school, there was more concern about public service, and representing the poor and the voiceless. That seems to have gone by the wayside.”

“One reason is pure economics,” said Ragazzo. “Many students incur great debt to get through law school. That forces them to go into corporate law to pay off their loans. And many public interest programs have dried up. Those that remain have to devote more and more time to fundraising, which undermines their mission. On top of that, in the last two decades the courts have become less receptive to civil rights claims.”

Ragazzo agrees with Guzmán that judges need firsthand experience of life in institutions. “It would be an eye-opening experience for judges to spend time in county jails and state prisons, and for that matter, in mental institutions. Judges should know what it’s like to have a mental disability and be housed in jail. The biggest mental health facility in California is the L.A. County Jail.”

“This was an inspiring film,” said Ragazzo. It captures the joy of making a

difference in someone’s life, of giving them hope. As a judge, I find that sometimes the most important thing you can do for a person is to hear their story.”

“Lawyers have a duty to fight to keep the judiciary independent, otherwise the integrity of our profession is compromised,” said Ragazzo. “Lawyers aren’t held in high esteem these days, in part because there’s a sense that our justice system only works for a certain group in society, not for everyone. We need to educate people about the importance of having fair and impartial judges with broad experience, who come from diverse socioeconomic, racial, and ethnic backgrounds.”

Educating judges is what Guzmán plans to do next. A month ago, he founded the Center for the Study of Human Rights in Chile at the Central University of Santiago. He hopes to attract the funding he’ll need to provide educational programs for judges worldwide about the importance of human rights and an independent judiciary.

Guzmán wants his new Center to provide support for judges who face the challenge of providing justice under great political pressure to do otherwise. “A judge is very much alone,” said Guzmán. “A judge deals with matters of conscience, of seeing if facts correspond to law, of being careful not to commit injustice. Otherwise, he’s just an executioner.”

“The Judge and the General” will air on August 19th on the PBS series, P.O.V.

Michele Magar, a civil rights attorney and journalist based in San Francisco, is the founding executive director of Ratify Now, an international nonprofit whose mission is to provide support to grassroots advocates worldwide working to persuade their nation to ratify and enforce the new United Nations disability rights treaty (more information is available at www.RatifyNow.org). She welcomes comments and ideas for future columns. Readers may reach her at mmagar@plaintiffmagazine.com.