

By Dennis Bernstein & Connie Blitt

A TUCSON, AZ
MIDNIGHT BULLET IN THE HEAD of her pastor was Sister Darlene Nicgorski's first taste of justice Guatemalan style. The Milwaukee-born Franciscan fled Guatemala, where she had established a pre-school, and crossed the border to southern Mexico, working for a year in refugee camps crowded with Guatemalan Indians and peasants. During her stay, Nicgorski heard and recorded the stories of a people whose suffering often transcended words. "It's sad I can't remember the specific stories anymore," she said. "After a while, one story melts into the next. The army came and killed. The army came and burned our animals, our crops and our people."

In 1982 she returned to the United States and began to speak out against U.S. sponsorship of the military in Guatemala and El Salvador, and she was given her second taste of justice, by U.S. Immigration and Naturalization Service (INS), which had indicted Nicgorski and 10 other clergy and lay church workers on charges of harboring, transporting and conspiring to smuggle undocumented Central Americans into the U.S.

Their tense, six-month trial culminated on May Day. Eight of the 11 defendants, including Nicgorski, were convicted of 16 felony counts and two misdemeanors. Some of them face jail and \$18,000 in fines.

"Our government has called us criminals," said Nicgorski to reporters and hundreds of supporters at a press conference, "yet it is this administration that violates the U.S. Refugee Act of 1980 and the U.N. Protocol Accords of 1967. Our government indicts us for conspiracy, yet our government conspires to suppress the right of Central Americans to determine their own future. Our government has found some of us guilty of transporting, yet our government has transported 30,000 refugees in three years back to their homelands to face possible torture and death."

After the verdict was announced, Michael Altman, attorney for Sister Darlene Nicgorski, was furious. He asserted that the judge had taken away "every defense we had in the world."

Words like "torture" and "refugee" were two of the many initially forbidden from use in Judge Earl H. Carroll's courtroom. "We couldn't even use the word 'life' at some points," explained defense attorney Karen Snell, "because that was considered too close to 'death,' and then you were talking about something horrible that you couldn't talk about. So it got to be almost a joke where the attorneys would have to say 'did something awfully bad happen to you' instead of 'were you imprisoned and tortured.'"



James Corbett, a sanctuary movement founder, was cleared of alien-smuggling charges.

SANCTUARY

Justice scaled down in Tucson verdict

"The only thing we could do in this non-sanctuary trial," declared Altman, a University of Arizona law professor, "is present a non-sanctuary defense and appeal to the basic good spirits of the jury." According to Altman, the defense's decision to call no witnesses was based on the hope that the jury would find what he believed were serious flaws in the prosecutor's case, or that the jury would discover independently their power of jury nullification. Jury nullification is the power of the jury to apply their own sense of morality and disregard the letter of the law if they decide a crime was committed for a higher good.

While prosecutor Reno held a press conference in which he thanked God for the jury, several jurors were expressing mixed emotions. "We didn't walk out of there feeling good," said one juror, who asked to be anonymous. "I think it was unanimous that we didn't want to find these people guilty."

Juror David McCrea commented, "I think we did follow the laws, but if there was justice done or not, I'm not sure."

Political motivations

When the indictments were first handed down in January 1985, refugee advocates hoped that the INS's discriminatory asylum policies would have their day in court. But before opening arguments began in Tucson, Judge Carroll barred a defense based on refugee or international law, or any mention of religious beliefs and humanitarian motives that may have inspired the 11 defendants to shelter refugees. The only question the judge wanted discussed was whether these people conspired to break immigration laws.

"Many judges," said noted attorney William Kunstler, "want to restrict a trial that is politically motivated to the bare bones of a criminal prosecution. That's always the device."

Kunstler's assertion is substantiated by the phone call INS special prosecutor Donald M. Reno received from D. Lowell Jensen, second in command at the U.S. Justice Department, immediately following the sanctuary verdict and before Reno announced at a victory press conference that "this is the precedent-setting case, it goes right to the heart of the movement."

The trial was conceived by the Reagan administration, said Peggy Hutchison, one of the convicted defendants, to tie up resources with a lengthy legal battle, and to criminalize the work of the sanctuary advocates in the eyes of the public. "People think we must have done something wrong for the government to send informants into the churches, to do this long undercover operation and to bring an indictment and call a grand jury," Hutchison said. Nominated by *Good Housekeeping* as one of America's 100 most promising young women in 1985, she now faces five years in prison and a \$10,000 fine.

Refugees take the stand

When the Central American refugees were called by the government to testify about aid the 11 defendants gave them, the prosecutor and judge found that ordering them to separate the mechanics of getting to this coun-

try from the violence they had suffered in El Salvador and Guatemala was like attempting to pull an atom away from its nucleus.

Guatemalan Miriam Hernandez and her one-month-old baby were arrested in defendant Wendy Le Win's apartment by the INS when the indictments were handed down. Hernandez told her lawyer she was afraid to testify because she could be deported or her family in Guatemala could be identified and harmed. On the stand, she broke down under questioning from the prosecutor. The jury was hurriedly dismissed and emergency medics were called to the scene.

The looming possibility of deportation put the refugees under great pressure to testify against the sanctuary workers. Prosecutor Reno's recommendations in an individual's file weighs heavily on INS deportation decisions.

In order to secure refugee testimony for the government, sanctuary infiltrator Jesus Cruz lied to some prospective refugee-witnesses. After he transported them from Tucson to Phoenix, Cruz maintained contact with refugees, dropping by for a meal or an offer to drive them on errands. Before they were to testify he asked them to come to INS headquarters where he would arrange for them to get a work permit. They were given instead an "order to show cause" form, the first step in the deportation process. Not knowing how to read English, many of them believed they had signed a work permit until informed otherwise by defense attorneys.

Jose Ruben Torres of El Salvador testified that he had been promised a work permit if he would take the stand as a government witness. He said INS agents told him all he had to do was "tell the truth." And that he would be shown papers, supposedly transcripts of INS interviews with him, to guide his testimony. When defense attorneys asked him if the government had shown Torres the transcripts, he answered, "They showed me papers, the thing is they haven't shown me any papers with the truth on them."

Defense attorneys were prevented from comparing Torres' testimony in court with his original statement to the INS, because the tape and transcript of his initial interview were missing from INS files. Defense attorneys charged this was one of six tapes and transcripts of witness interviews that suspiciously disappeared from the hands of chief INS investigator James Rayburn. Concluding a special hearing on the missing information from Torres' file, Judge Carroll called the government's actions "inattentive and negligent," but no punitive measure was taken.

"If they're going to indict Mexican nationals and have most of the trial in Spanish, which this one was," commented defense attorney James Brosnahan, "you really do need someone who is open-minded on the subject of Hispanic people. I think the judge has a very serious problem in that regard."

Brosnahan listed numerous examples of what he termed the judge's "cultural perception problem," which others labeled racism.

During the testimony of the first refugee-witness, Alejandro Rodriguez, Judge Carroll found Rodriguez' refusal to limit his responses to one-word answers and his references to torture frustrating. The judge commented in an aside with the lawyers, "I think people from Latin America perhaps have a difficulty in just answering 'yes' or 'no'." The defense filed a motion asking Judge Carroll to step down from the case because of bias. He denied their motion.

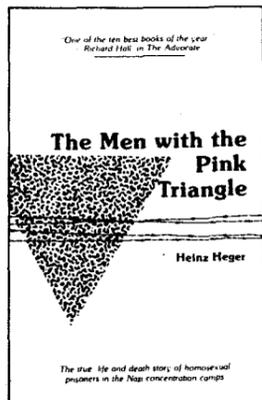
Yet the "hidden agenda" of the U.S. government to "discredit and silence" the sanctuary movement through the use of covert investigations and federal indictments has already backfired in the court of public opinion and is creating martyrs for the cause.

Quaker James Corbett—a founding member of the sanctuary movement, and one of three acquitted by the Tucson jury—said that "we will continue to provide sanctuary services openly and go to trial as often as is necessary to establish the legality, or more directly, to actualize the Nuremberg mandate that the protection of human rights is never illegal."

Dennis Bernstein and Connie Blitt have covered the Tucson trial for *In These Times*.

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By William Gasperini

MOCORON, HONDURAS

EARLY ON THE MORNING OF MARCH 25, mortar explosions rent the air in the Miskito Indian village of Bilwaskarma on the Coco River, which forms the Nicaraguan-Honduran border. The sudden attack stunned the 700 villagers, who are among some 10,000 Miskitos who have returned since last year to rebuild communities forcibly evacuated in 1982.

"All I heard were loud explosions, and as dawn approached I could see Sandinista troops bombarding the schoolhouse," said Guillermo Chow bitterly. "We thought the KISAN 'muchachos' [boys] were there, but none were. Now we have had to flee again."

The attack and two others later that day in the neighboring villages of Wasla and Kum triggered another mass exodus of the long-suffering Miskitos, this time north across the river into Honduras instead of south deeper into Nicaragua. Within two days, 8,000 Miskito and 200 Sumu refugees had crossed the serpentine river and hiked through thick swamps to temporary camps administered by the United Nations High Commissioner for Refugees (UNHCR).

What had happened? Ten months before, in May 1985, a cease-fire between the Sandinistas and Miskito fighters allowed former inhabitants to resettle along the river. By late summer a new Miskito group emerged: KISAN, which means "unity" in the Miskito language, was originally formed in an effort to unite several factions. Some KISAN members supported the peace; others, however, opposed both the cease-fire and negotiations with the Nicaraguan government, a position bolstered by U.S. aid. A new round of conflicts ensued, leading over several months to the Sandinista attack on Mocoron.

After the violence in March the Miskitos found themselves once again uprooted. While there was no doubt that government troops had attacked (dozens of refugees spoke of seeing heavy tanks), the key question in this new drama was what, or who, provoked the fighting.

The Honduran press quickly zeroed in on "brutal Sandinista assaults against the Miskito people." KISAN leader Roger Herman said his men had responded to fire, and accused the Sandinistas of killing civilians after several mortar rounds fell in Wasla.

Managua immediately charged that KISAN and the CIA planned the attacks to disrupt the peace process on the Atlantic coast. The rebels' presence and activity in the area quickly became the prime issue in determining what had occurred.

While admitting that KISAN combatants frequently entered the village, most refugees scoffed at the Sandinista charges. Few hid their open sympathies for the rebels.

"KISAN would come into town, but never in large groups or to stay," said one person. "They would come to visit their families, and their presence was no reason for the Sandinistas to attack as they did."

Others disputed this contention, saying the rebels did have a major encampment in the Bilwaskarma school and in a military post near Wasla formerly occupied by Sandinista forces. Several refugees said that KISAN had fired on Sandinista positions outside the villages in the weeks preceding the attacks, and went into villages in groups of up to 200.

Over and back

"Once the Sandinistas fired at them we hid across the river and came back three days later to see about returning," said Teodoro Gomez of Wasla. "The Sandinistas told us it was all over and we could come back. But across the river KISAN prevented anyone from doing that."

By then dozens of other communities had fled in panic, prodded by the rebels to the point that the Sandinistas accused KISAN of wholesale kidnapping.

"KISAN came and said we had to cross into Honduras, because the Sandinistas were coming to kill us," said one woman from an upriver community, cooking beans over a small fire in the muddy refugee camp

near Mocoron. Relief officials, however, doubted the common refugee version of an unprovoked Sandinista attack.

"All we know is that battles occurred, and the people fled," said a U.N. relief official. "We heard their stories of mortars falling and the killing of civilians. At the same time, we know rumors run rampant with the Miskitos, and that an armed political group allied with people seeking to

and five days after the Nicaraguans entered Honduras, attacking an FDN *contra* training camp in El Paraiso province.

• After the Miskito exodus began, Washington apparently sought to make the most of it, with Vice President George Bush set to visit one temporary refugee center accompanied by dozens of foreign journalists in Honduras to cover the Paraiso incident. He never came, as poor visibility delayed

CENTRAL AMERICA

Miskito Exodus II: Refugees endure a violent sequel



Skirmishes between Sandinista patrols (shown here) and Miskito fighters continue along the Coco River.

overthrow the Sandinistas operates along the river."

Approximately 2,500 people are in the Mocoron camp, with another 5,000 in a camp called Tapamlaya, located 30 miles from the border but only a five-hour walk from a KISAN base. An official with World Relief, one of several U.S.-based organizations working in the zone, said relief efforts aimed to move people farther inland as soon as possible, in part because camp conditions are bad but also because KISAN has entered Tapamlaya to recruit fighters.

Refugees feared that new fighting would force them back to the resettlement villages they universally despised.

He said this and other factors point to a larger story behind the sudden turn of events:

• The latest Coco River incident occurred just as Congress debated President Reagan's \$100-million *contra* aid proposal,

the press trip and Libya dominated the news.

• Once journalists did make it to the remote area, many felt refugees had been "coached" as to what they should say.

• Knowing the effort Managua placed on moving the 12,000 indigenous peoples back to their cherished river homeland, an "unprovoked attack" on the villagers made no political sense.

Who started it?

At the same time, it seemed plausible that Nicaragua sought to deal KISAN a blow coinciding with the Paraiso strikes on the larger FDN. Coming at the end of the six-month dry season, March and April have traditionally been months of military activity.

Managua was also uneasy about increased U.S. and Honduran military presence in the area, where U.S. Army engineers just completed work on a 4,100-foot military runway. One refugee spoke of government troops digging defensive trenches near the Nicaraguan town of Puerto Cabezas, as rumors of a full-scale attack across the Honduran border circulated in early March.

Although a Sandinista offensive on KISAN positions may have made sense militarily, the attacks nonetheless carry a high political price. Another possibility, however, is that KISAN initiated the fighting in order to destroy what little respect the Sandinistas still had among the Miskitos.

"How can we ever have confidence in them?" asked one man. "They have said 'pardon us, we made many errors in dealing with you.' We won't listen to that anymore. This is unpardonable."

Rumor and confusion reached such an extreme that refugees even claimed Nicaraguan Interior Minister Tomas Borge had predicted they would not remain long in the 40 villages dotting the riverbed. Several interpreted a Borge statement that "if the *contras* win they will find only rocks and dirt" as literally marking them for extinction.

Tumultuous history

Such exaggerated sentiments stem from the long, tumultuous history of relations between Managua and the Miskitos. Refugees said they were particularly fearful that new fighting would force a return to the universally despised resettlement villages most lived in after the 1982 evacuation.

At that time, Managua moved 12,000 Miskitos inland as cross-border attacks by the newly formed *contras* increased. Another 15,000 left for Honduras. Most

river villagers have relatives in Honduras among these "old refugees," leaving no doubt as to where they would go this time if fighting broke out.

Life for both new and old refugees has not been easy, as soils away from the river are poor. Indians must secure annual permission from the Honduran forest ministry to farm, due to the traditional practice of "slash-and-burn" planting in different sites each year. The latest influx of refugees will strain the area's fragile ecosystem, which is characterized by pine forests, grassy fields and thick tropical foliage along the meandering rivers.

The limit on planting forced some 1982 refugees to remain dependent on relief organizations for food supplements. Other work is scarce and distant markets force people into relying solely on their own produce to survive.

For these reasons, a trickle of refugees is flowing back to Nicaragua even as a new flood heads in the opposite direction. Sixty-five Indians, most of them Sumus (a smaller indigenous group), returned to Nicaragua under UNHCR auspices on April 29. Some had left as long ago as 1981, while others said they were caught in the recent fighting but feel conditions are still better in Nicaragua.

"One cannot feel good in a strange country, without enough food or money," said Teodoro Gomez. "You can only work well on your own land."

William Gasperini is *In These Times'* correspondent in Nicaragua.