

My daughter Lori Berenson has been wrongfully incarcerated in Perú since the night of Nov. 30, 1995, when she was arrested on a public bus in Lima. She was twenty-six years old.

What Was Lori Doing In Perú?

Lori became interested in Perú after reading extensively about that country. Lori traveled to Perú in November 1994 and became further intrigued with the rich indigenous history, culture, and interesting political atmosphere. In April 1992, Perú experienced a "self-coup" and political upheaval as President Alberto Fujimori attempted to bring peace and order to the chaotic nation with strong leadership and repressive anti-terrorism laws. Lori traveled throughout the country learning about the culture and meeting many poor Peruvians.

Relying on her hands-on experience with poverty and the plight of the poor in Central and South America, Lori was able to obtain assignments from two U.S. publications, *Modern Times* and *Third World Viewpoint*, to work as a free-lance journalist. She secured appropriate press credentials in Lima, Perú's capital. At the time of her arrest Lori was researching articles about the effects of poverty on women in Perú. We are in possession of some of the transcripts of her work, but the Peruvian anti-terrorist police seized most of it when they searched her apartment.

Did Lori Know MRTA Members?

Lori now knows that some of the people she met during the months she was in Perú before her arrest were members of the rebel organization MRTA (Movimiento Revolucionario Tupac Amaru). But before her arrest she did not know their real names or that they were involved in MRTA activities. As Lori stated

Guilt By Association – The Political Jailing of Lori Berenson

By Mark L. Berenson

in an interview with *The Washington Post*, "My relationship with the other people accused was a social relationship, talking about things. Until I was in jail I finally figured out more or less what they are, which is much different than what I thought originally...."

Soon after Lori arrived in Lima, a sprawling city of almost seven million people, she and Pacifico Castrellón, a Panamanian artist she met while traveling to Perú, co-rented a house in the city's La Molina district. It was a large, four-story house, like a boarding house, and had ample room for Castrellón to paint. Several weeks later, Lori and Pacifico sublet the house's fourth floor to a man who said he was an engineer named Tizoc Ruiz. After that, Lori never went to the fourth floor. Ruiz subsequently hired a live-in housekeeper.

Lori moved out of the house in August 1995. At the time of her arrest almost four months later, she was living in an apartment across the city in Lima's San Borja district. The large La Molina house, however, remained occupied by Pacifico, the housekeeper and Ruiz – along with the 18 MRTA recruits brought in from the Peruvian jungles who were clandestinely residing in the rooms on the fourth floor and training in preparation for an attack on the Peruvian Congress.

After Lori's arrest, she first learned that Castrellón was in fact a long-time MRTA member, and that the alleged engineer Ruiz to whom Lori was introduced on a social basis, was really Miguel Rincón, a high-ranking MRTA leader. In addition, the hired house-

keeper turned out to be an MRTA member and the alleged Bolivian photographer Rosa Mita Calle, who Lori had met a few weeks earlier, was really Nancy Gilvonio, a Peruvian married to Nestor Cerpa, the MRTA leader). Nancy was arrested on the same bus as Lori.

Military Tribunal Convicts Lori of Treason

In January 1996, a hooded military tribunal (now deemed illegal in Perú) convicted Lori, a U.S. citizen, of treason against the fatherland of Peru as a leader of the MRTA. The tribunal then sentenced her to life in prison while a hooded soldier held a gun to her head. The military tribunal's proceedings were arbitrary and did not observe any of Lori's due process protections. Lori was unable to defend herself against any accusations, and she wasn't informed of statements people had made about her – possibly under duress and threats of torture.

Negative Reaction to Lori's Military Conviction Leads to Civilian Trial

In December 1998, the United Nations High Commission on Human Rights stated Lori had been deprived of her liberty arbitrarily and the government of Perú must take all necessary steps to remedy her wrongful incarceration.

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compelling evidence of his actual innocence, whereas House did not. House only had evidence supporting that "it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt."²⁸ That is the gateway standard under *Schlup v. Delo*, 513 U. S. 298 (1995) for obtaining federal review in spite of a state procedural default.²⁹ Consequently, *Weichel* not only meets the *Schlup* standard for federal review of his state conviction, but he arguably also meets the even higher standard implied in *Herrera v. Collins*, 506 U. S. 390, 417 (1993), that "a freestanding innocence claim" warrants federal relief from an unconstitutional imprisonment (or execution).³⁰

Time will tell how the next chapter of *Weichel*'s 26-year odyssey unfolds.

Endnotes:

- 1 *Commonwealth v. Welch*, No. SJ-09556 (Mass. 05/22/2006); 2006.MA.0000193 ¶21 <http://www.versuslaw.com>
- 2 *Id.* at ¶22 <www.versuslaw.com>
- 3 *Id.* at ¶40 <www.versuslaw.com>
- 4 *Id.* at ¶39 <www.versuslaw.com>
- 5 Information from the FBI website on June 25, 2006, at <http://www.fbi.gov/wanted/topten/fugitives/bulger.htm>
- 6 "Dear Gloria, I really don't know what to say! So I will get straight to the point. I haven't had a good night sleep in almost a year because I know [the defendant] did not kill [the victim]. I did! Yes, Gloria I killed [the victim]. [The defendant] has known this. I told him a couple weeks after it happened! Gloria, I never thought in a million years that they would blame and convict a[n] innocent man. Gloria, I am so sorry for all of the pain I put you and [the defendant] through. I can't let [the defendant] spend the rest of his life in jail for something he didn't do! So, Gloria, if there is ANYTHING I can do to help clear [the defendant] please let me know. Gloria, I mean anything at all." (Emphasis in original.) The letter was signed "Tommy Barrett"; was dated March 19, 1982; bore a Mill Valley, California, return address; and bore a California postmark dated March 19, 1982.
- 7 *Id.* at ¶41 <www.versuslaw.com>
- 8 *Id.* at ¶31 fn.4 <www.versuslaw.com>
- 9 *Id.* at ¶46 <www.versuslaw.com>

- 10 *Id.* at ¶46 <www.versuslaw.com>
- 11 *Id.* at ¶54 <www.versuslaw.com>
- 12 *Id.* at ¶54 <www.versuslaw.com>
- 13 *Commonwealth v. Welch*, No. 77144, Memorandum Of Decision And Order On Defendant's Motion For A New Trial, (10/25/2004)
- 14 *Commonwealth v. Welch*, *supra*, ¶64 <www.versuslaw.com>
- 15 *Id.* at ¶64 <www.versuslaw.com>
- 16 *Id.* at ¶66 <www.versuslaw.com>
- 17 *Id.* at ¶67 <www.versuslaw.com>
- 18 *Id.* at ¶73 <www.versuslaw.com>
- 19 *Id.* at ¶78 <www.versuslaw.com>
- 20 *Id.* at ¶81 <www.versuslaw.com>
- 21 *Id.* at ¶66 <www.versuslaw.com>
- 22 *The Brothers Bulger: How They Terrorized and Corrupted Boston for a Quarter Century*, by Howie Carr, (Warner Books 2006), p. 330.
- 23 Rat: Tips foiled feds' efforts to nab Whitey, *Boston Herald*, August 23, 2005; 10 years, six continents, still no 'Whitey', *Baltimore Sun*, August 28, 2005.
- 24 *Commonwealth v. Welch*, ¶66 <www.versuslaw.com>
- 25 Clifasefi SL et al. "Blind Drunk: The Effects of Alcohol on Inattention Blindness." *Applied Cognitive Psychology* 20: 697-704, July 2006.
- 26 Some Effects of Alcohol on Eyewitness Memory, John C. Yuille and Patricia A. Tollestrup, *Journal of Applied Psychology*, 1990, Vol. 75, No. 3, 268, 271.
- 27 *Commonwealth v. Welch*, *supra*, ¶61 <www.versuslaw.com>
- 28 *House v. Bell*, No. 04-8990 ¶123 (U.S. 06/12/2006)
- 29 *Id.* at ¶12, 18
- 30 *Id.* at ¶126.



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In August 2000, the Supreme Council of Military Justice acted on evidence proving Lori was not a leader of a subversive group. They nullified her conviction and overturned her sentence; however, instead of ordering her release they remanded her case to Perú's Special Civilian Courts for Terrorism. At that time, according to the U.S. State Department's annual country reports, trials in these courts "fail to meet international standards of openness, fairness, and due process."

Lori's Civilian Trial

Lori was never involved in any act of violence in Perú or elsewhere, and she was never accused of such. In her civilian trial she was accused of collaboration based on: (1) pretending to be married to Pacifico Castellón in order to rent the house in La Molina to be used as a safe haven for the MRTA; (2) renting the apartment in San Borja to hide Nancy Gilvonio; (3) participating in indoctrination courses for MRTA members and preparing and serving food for them; (4) buying beepers and other electronic equipment for the MRTA; (5) obtaining press credentials for herself and Nancy Gilvonio in order to enter Congress and aid the MRTA in their plans to seize the Congress. None of the accusations were supported by evidence. In particular:

- No witness claimed Lori was a member of the MRTA and no other evidence supports the charge.
- No witness claimed Lori collaborated with the MRTA. Even Castellón, the prosecutor's principle witness, testified he did not know of any collaboration between Lori and the MRTA.
- The prosecutor charged Lori with buying beepers, cell phones and computers for the MRTA but his only evidence were receipts for one of each and the only testimony showed they were her personal property.
- No witness supported the prosecutor's claim that the La Molina house was rented for the purpose of providing a "safe haven" for the MRTA in order to plan an attack on the Peruvian Congress. MRTA leader Rincón testified that MRTA members moved into the fourth floor weeks after Lori moved out. Those members testified they never saw Lori until after their arrests.
- Lori rented an apartment in San Borja in August, nearly four months before her arrest on Nov. 30, 1995, and the raid on the house in La Molina. All the evidence, including testimony of two doormen at the new apartment, was that she lived there alone as a normal tenant and no one associated with the MRTA was identified as ever

being there, including Nancy Gilvonio who the prosecutor charged was hidden there.

- Castellón and Rincón both testified Lori knew nothing about any MRTA plans concerning the Congress and never provided the MRTA with any information about the Congress.
- Affidavits from editors for the two U.S. magazines attested that Lori was authorized to write articles for them about the status of women and the prevalence of poverty in Perú and they maintained contact with her concerning the articles until her arrest.

Although Castellón was a prosecution witness, during the public phase of her trial he declined to accuse Lori of collaborating with the MRTA. He also testified that he never heard her talk about subversive activities. All of those who lived on the fourth floor testified they never saw Lori until after their arrest, confirming Lori's testimony. Rincón testified that Castellón was a long-time, important member of the MRTA who brought Lori unknowingly into the picture to cover-up MRTA activities. Rincón emphasized that Lori did not know who he was or his connection to the MRTA when he lived in the La Molina house, and she did not know about Castellón's involvement. Rincón said Lori was not a member, of or a collaborator with the MRTA.

On June 20, 2001, the civilian court acquitted Lori of a leadership role in the MRTA that formed the basis of her military tribunal conviction. She was also acquitted of both membership in a subversive group and militancy in a subversive group. In spite of the testimony by MRTA's members that Lori was not involved with them in any way, and they had concealed their activities from her, she was found guilty of collaboration and was convicted as a "secondary accomplice." This essentially means that she was found to have been acquainted with people known to belong to what the Peruvian government deemed a terrorist organization (MRTA). Although it seems inconsequential, Lori knowing people who concealed their true identities and personal ties formed part of the charge of collaboration with terrorism – which carried a minimum 20 year sentence. Lori was subsequently sentenced to 20 years imprisonment.

Lori's Civilian Court Conviction Challenged

Perú's Supreme Appeals Court reviewed Lori's civilian trial. Justice Guillermo Cabala, the Court's president, argued in February 2002 that he did not agree with Lori's conviction for collaboration because he did not think the charge was proven. He argued that "Lori Berenson is not a terrorist and has not committed a terrorist act."

He was outvoted 4 to 1, as the Court affirmed Lori's conviction.

The Inter-American Commission on Human Rights had been studying Lori's case since January 1998. After all judicial remedies were exhausted within Perú, on April 3, 2002, it announced its unanimous 7-0 decision that Lori's civilian trial was riddled with violations of due process; that her rights under the American Convention on Human Rights needed to be completely restored; that she receive moral, psychological and financial indemnification for her wrongful suffering; and that Perú must bring its anti-terrorism laws into compliance with international standards. Problems cited with the civilian trial included the lack of presumption of innocence, the bias of the chief judge, the failure of the Peruvian court to allow Lori's defense attorney proper access to records or time to be with her, and the failure of the Peruvian court to properly document its conclusions in reaching its verdict against Lori.

The Inter-American Commission has no way to enforce its rulings and Perú refused to comply with it. So three months later, in July 2002, the Commission brought the case before the Inter-American Court of Human Rights, whose decisions are binding for all members of the Organization of American States (OAS) that accept its jurisdiction.

In November 2002, the Inter-American Court agreed to review the Inter-American Commission's case against Perú. The Inter-American Court's role is not to judge guilt or innocence, but to ascertain whether an accused person has had a fair trial with full guarantees of due process under the American Convention on Human Rights.

For two years we waited.

Perú Influences the Inter-American Court

Anticipating a court ruling for Lori's freedom, Peruvian politicians who seemingly never agree on anything united against Lori by calling the Inter-American Court "soft on terrorism" – words that could only embarrass it in the post-9/11 global campaign against terrorism.

Peruvian President Alejandro Toledo and his administration also devised a clever political ploy. On November 5, 2004, ten days before the Inter-American Court was to reconvene in Costa Rica, a projected lengthy mega-trial of Shining Path leader Abimaél Guzmán and 17 co-defendants was scheduled to begin, despite the fact that the Peruvian courts normally begin a long summer recess at the start of the holiday season.

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On the mega-trial's first day, the chief judge "allowed" the press to encourage Guzman and his followers to ignore the court, raise their fists and chant, causing chaos in the courtroom and an immediate suspension of the trial.

The next day, on November 6, President Toledo raised the specter of "terrorism," voicing his determination to protect the Peruvian people from the return of terrorism. Allegedly "angered and embarrassed" by the Shining Path courtroom spectacle, an "irate" President Toledo declared that nobody "accused or convicted of terrorism will ever go free."

Rumors linking a favorable decision for Lori Berenson to the freedom of hundreds of dangerous "terrorists" circulated in Perú for more than two weeks. The impending verdict in Lori's case became first-page news and received widespread radio and television coverage. The media campaign to fuel fear of terrorism was successful. A poll conducted in November indicated that 82% of the population in Lima believed terrorism was an "imminent threat," in spite of the fact there had not been serious terrorist activity in years.

Self-selecting write-in, wire-service polls indicated overwhelming support from a frightened populace for Perú to ignore any decision favorable to Lori, and if necessary, to withdraw from the Inter-American Court's jurisdiction.

The court's final hearings, held on November 24 and 25 in Costa Rica, were closed to the public, and no lawyers from Lori's legal team, the Inter-American Commission, or the Peruvian government were allowed to participate. Nevertheless, the Peruvian *ad hoc* judge was able to argue his government's position, as he told the Peruvian newspaper *Peru21*, point-by-point, with no one able to provide countering viewpoints.

Inter-American Court Capitulates to Peruvian Politics

Rather than be rendered powerless by a disgruntled member country, on December 2, 2004, the Inter-American Court voted 6-1 to uphold Lori's civilian conviction. The Court's decision did, however, order Perú to compensate Lori for her illegal military trial and the inhumane and degrading treatment she received during her incarceration at the infamous Yanamayo Prison. The Court ordered removal of a \$30,000 fine levied against her, and to compensate her family \$30,000 for legal expenses unnecessarily incurred by that illegal military trial in 1996.

Chilean Judge Cecilia Medina Quiroga, re-

portedly the writer of the original working draft that allegedly called for Lori's freedom, wrote a strong dissenting opinion. She said that Perú's laws did not comply with the due process requirements of the American Convention on Human Rights, and that the only fair remedy was Lori's immediate liberation. Medina Quiroga argued the Inter-American Court should not rely on tainted evidence from Lori's illegal military trial and that Perú must adequately define terrorism before it could convict her (or anyone else) of collaboration with terrorism.

Monroy Galvez, the *ad hoc* judge appointed to represent Perú in the Court's closed-door deliberations and vote, substantiated the effectiveness of Perú's orchestrated political campaign to influence the Court's decision. Galvez later told *Peru21* that on November 10 he received the Court's "working draft document" of its preliminary decision. He said it was very favorable to the Inter-American Commission's position in the case, apparently calling for Lori's release.

If it is true that pressure politics won out over truth and justice, then there is little hope for individuals in high profile cases looking to the Inter-American Court to protect their rights.

Perú Uses the Napoleonic Legal System

Peruvian justice, based on the Napoleonic system of proving innocence, is foreign to our judicial culture. To me, it is often incomprehensible. In Perú, murderers, rapists, kidnapers, violent offenders and armed robbers receive short sentences and on average are back on the streets in under five years. Lori, who has never even been accused of being involved in an act of violence, has, as of mid-2006, been imprisoned for almost 11 years.

Perú Has Made an "Example" of Lori

From the first moments of her arrest on Nov. 30, 1995, Perú's then President Alberto Fujimori decided to "make an example" out of Lori as a warning to others who might venture to Perú and speak the truth about his dictatorship, thinly veiled as a democracy. The politicization of her case began when Fujimori waived her U.S. passport on Peruvian television the morning after her arrest. Through Fujimori's controlled media, Lori's image was portrayed as that of a "terrorist monster." Lori was smeared and maligned and through this character assassination she became the symbol of Perú's tough stance against "terrorism." Unfortunately, subsequent Peruvian governments have continued Fujimori's policy toward Lori, even though he himself is now a fugitive. (Former President Fujimori is currently being detained in Chile awaiting extra-

dition to Perú to stand trial for a multitude of crimes allegedly committed during his time in office, including: murder, torture, corruption, wiretapping, election tampering, illegal enrichment, and other crimes.) Incomprehensibly, there has not been sufficient interest among the many honorable Peruvian politicians to closely examine this orchestrated and wrongful political persecution of Lori.

Peruvian prisons are primitive by U.S. standards, and Lori nearly 11 years of imprisonment have been brutal, particularly the five years before her treason conviction was thrown out. For the first three of those years, Lori was kept at Yanamayo, a special prison for terrorists located in the Andes Mountains at an altitude of 12,700 feet. The extremeness of being imprisoned at that altitude is indicated by the fact that Mount Whitney in the Sierra Nevada mountains of California is the tallest peak in the continental United States, and at 14,498 feet it is less than 1,800 feet higher than the Peruvian prison. Compounding the altitude was the conditions under which she was held. In 2000 she said, "I was in a very dark place; I was isolated. For almost two years I was not allowed to see anyone, hear anyone, talk to anyone. It was harsh and cold." (Lori Berenson Speaks, *48 Hours* (CBS News), October 19, 2000.)

Alan García was elected as Perú's new president on June 4, 2006, and he will take office on July 28, 2006. We can only hope that President-elect García will review the case, realize that Lori has been wronged, change Perú's position towards Lori and pardon her.

Lori or Mark Berenson can be written at:

The Committee to Free Lori Berenson
P.O. Box 701
New York, NY 10159-0701

Or email, berenson@freelori.org

Mail to Lori will be forwarded to her at Huacariz Prison in Peru. Prison officials censor her mail for content, so no mention should be made of her case, anything political, or any recent news event.

Mark L. Berenson, a professor at Montclair State University, is Lori Berenson's father. More information is available at www.freelori.org. This article is edited with permission of the author, and is based on two articles by the author, *The Political Jailing of Lori Berenson*, by Mark L. Berenson, *CounterPunch*, Weekend Edition, January 22-24, 2005; and, *Perú vs. Lori Berenson: The Case Continues*, by Mark L. Berenson, *NACLA Report on the Americas*, Vol. 38, No. 5, March/April 2005 pp. 4-5.

