

Petrona Tomas' father, Miguel Pascual Tomas (far left), sold her to a man when she was 11. When she came to the United States at 14 and gave birth to a premature girl, she was arrested and charged with first-degree murder, and became entangled in the politics of State Attorney Barry Krischer (center) and lawyer Marc Shiner.

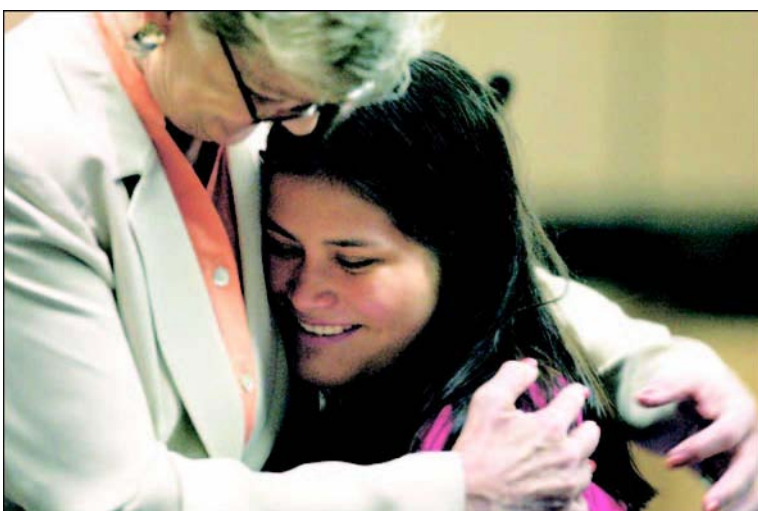
'They were willing to sacrifice her'



JENNIFER PODIS/Staff Photographer

The girl from a tiny village in Guatemala spoke Kanjopal, but she was interrogated in Spanish. For several court appearances, no Kanjopal translator was present to speak to her, or for her. A child who came to Florida believing the world was flat was lost in the prosecutorial dervish around her.

Instead, Petrona Tomas finally got advocates without personal agendas.



UMA SANGHVI/Staff Photographer

Petrona Tomas and her foster mother, Linda Taft, embrace after the court appearance July 9 at which Judge Hubert Lindsey accepted Tomas' plea to a lesser charge of child neglect.

By DAN MOFFETT

Nothing about the bewildered Akateco Indian girl suggested that she was capable of putting the judicial system on trial.

Were it not for the orange jail coveralls, she might have walked into the Palm Beach County courtroom unnoticed in October 2002. She was barely 4-foot-10 and, in a chirping voice, spoke a language that no one had heard. She didn't know her age. Maybe she was 13, maybe 14. For weeks, she was misidentified as her sister.

What was known for sure about Petrona Tomas was that she had delivered a baby in a Lake Worth apartment, and police had found the tiny, premature newborn dead, with a wad of toilet paper in its throat.

That was all prosecutors wanted to know. They charged her as an adult with first degree murder and quickly got a grand jury indictment. She was an illiterate illegal immigrant who was baffled even by the courthouse escalators. She was brown and female in an arena of white men. Her father had sold her when she was 11. She was a disposable child in Guatemala, and the system was intent on disposing of her here. It figured to be over fast.

Nearly two years later, the Tomas case is

See MOFFETT, 5E

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'We were screaming, but nobody was listening'

MOFFETT from 1E

resolved but not over. The Department of Justice is investigating complaints of civil rights abuses, and the legal community faces questions about the prosecution of juveniles as adults and the recognition of cultural barriers. For Palm Beach County State Attorney Barry Krischer, who has cultivated a reputation for taking hard stands against young offenders, the handling of the case suggests an abdication of prosecutorial discretion and a willingness to rush for over-charged indictments to fulfill political expectations.

"Absolutely, this case never warranted first-degree murder charges," says Public Defender Carey Haughwout. "I think there is a lesson that you have to be sensitive in doing competency evaluations promptly."

Ms. Haughwout's office represented Tomas briefly before private attorney Marc Shiner took over at the request of the girl's father and the Guatemalan-Maya Center in Lake Worth. Had public defenders stayed on the case, they would have pressed for psychological, intellectual and physical evaluations and likely asked prosecutors to delay going to the grand jury until testing was completed. Even cursory evaluations would have shown that Tomas was fluent only in her native dialect, Kanjobal, and was clueless about her legal circumstance.

Mr. Krischer has justified his record of prosecuting juveniles as adults by citing the Juvenile Assessment Center as a safety net. At the JAC, juveniles are supposed to receive a two-hour assessment within hours after their arrest and an evaluation by a state attorney. But Tomas, a defendant who clearly warranted extensive testing, never went to the JAC or talked with an evaluator - according to a spokesman for prosecutors, because Lake Worth police arrested her on adult first degree murder charges. A case that cried out for a second look never got one.

"From the beginning, Krischer did not understand the complexity of this case," says Marisol Zequeira Burke, a Stuart immigration lawyer. "He didn't bother to look at the cultural complications. He never understood that there was nobody speaking on behalf of the child."

Mr. Krischer could have exercised the discretion of his office and not taken the case to the grand jury, especially since the police interviews he presented were conducted in Spanish, a language Tomas did not speak. But prosecutors who want to send juveniles to the adult system benefit from the political cover grand juries provide. Most often, jurors believe that they have no alternative but to indict. And putting Tomas on the stand to defend her-



Petrona Tomas in her room at John and Linda Taft's condo in South Palm Beach. She is spending the summer in Vermont with the couple and will return in the fall.

UMA SANGVHI/
Staff photographer

self was impossible, given her cultural detachment.

"A grand jury is not the objective process we like to think it is," Ms. Haughwout says. "The information it receives can be very selective, too. There has to be room for prosecutorial discretion in the charging process."

Most of the people who entered Tomas' life in the weeks after her arrest brought their own agendas with them. Mr. Shiner was in the cross hairs of conflict: On one flank, he quarreled with leaders of the Guatemalan-Maya Center over whether to build a defense for trial; on another, he was locked in an icy stalemate with Mr. Krischer, his old boss, over plea negotiations.

Lucio Perez-Reynoso, the center's director, and Father Frank O'Loughlin, then its chairman, had called Mr. Shiner into the case to replace the public defender. By December 2002, they were regretting the decision. They were pushing for a fast resolution to spare the Mayan community what they thought would be damaging publicity. The Mayan center is a United Way agency that relies on public and philanthropic support. The story of a dead baby in a bathroom was something it didn't need.

Father O'Loughlin wanted Mr. Shiner to take the adult aggravated manslaughter plea with a lengthy prison sentence that the state attorney's office was offering. Mr. Shiner, however, was refusing to negotiate. He appeared on Bill O'Reilly's

Fox News show and promised a compelling defense, and he told *The Palm Beach Post* that he would not allow Tomas to "become the poster child for what's wrong with juvenile justice in this country."

Mr. Shiner's comments angered Mr. Krischer. Mr. Shiner had prosecuted Nathaniel Brazill, the office's most famous child conviction. There is at least the appearance that Mr. Krischer marched the Tomas case to the grand jury to penalize Mr. Shiner for his bravado. Mr. Krischer blames Mr. Shiner for the impasse: "He wouldn't talk to me."

The Mayan center called in West Palm Beach lawyer Jack Scarola to help broker a deal. Mr. Scarola said he was representing the Tomas family and said negotiations were possible, despite the grand jury indictment "There is a significant sentiment within the state attorney's office," Mr. Scarola said, "that adult prosecution is not what they're hoping to achieve." But talks went nowhere.

The Rev. O'Loughlin dismissed as "yellow journalism" newspaper stories about the misogynist abuses endured by women in Tomas' remote village of San Miguel Acatan. He pressed for a deal that would end the case and even saw benefits in a prison sentence. "She has no defense," he said. "She goes to jail for six years, she gets an education, she learns the language. When she comes out, she's still a young woman. It's not the worst thing."

In fact, the Rev. O'Loughlin was

wrong. A strong defense was there to be made. Two other Mayan women came into the apartment before paramedics and police arrived. Tomas was not alone. A medical examiner found tissue in the baby's ear, as well as the throat. What murderer attempts to take a life by stuffing toilet paper in an ear? Indigenous people often put rags in a body's orifices to dress it for burial. The viability of the premature, 2.77-pound, breech-delivered infant was itself an issue. Much of the prosecution's case relied on incoherent police interviews conducted in the wrong language. They were useless.

But the system failed Tomas in providing her no voice to protect her best interests and no one else's. When the public defender's office gave the case to Mr. Shiner, the Mayan center and her father took control. The system dealt Tomas the worst of both legal worlds: It found her adult enough and competent enough to face murder charges and a life sentence, but it turned her defense over to people with self-serving agendas and considered her irrelevant to her own fate. For months after her arrest, the system treated her as if she weren't there.

Mistakes at the courthouse compounded her mistreatment. During at least three proceedings, no Kanjobal translator was present to explain what was going on. A teenager who had never used a water fountain and who came to Florida believing the world was flat was lost in the strange drama around her.

Yet, Tomas consistently maintained her innocence. "I did not kill the baby," she told Sister Rachel Sena, director of a Mayan ministry in Lake Worth.

By the spring of 2003, Mr. Shiner was pushing for the plea deal that the Mayan center wanted. Tomas said he brought autopsy photos of her dead infant to the jail and showed them to her. She said she cried when she saw them. She had not seen the baby since its bloody arrival in the bathroom and did not know its gender. Told it was a girl, she named it "Angelina."

Ms. Haughwout said Mr. Shiner complained about threats from prosecutors to end plea negotiations if he did any work on the case. So the file stayed empty for a year. "I think that was very inappropriate," Ms. Haughwout says. "That's how you get to the truth - when both sides do their jobs."

In June 2003, two immigration lawyers interceded and gave Tomas an uncompromised legal voice for the first time. Aileen Josephs filed a dependency motion with Juvenile Court Judge Roger Colton. Ms. Josephs asserted that Tomas' father had sold her to a man from another village, and that she was a victim of neglect, abandonment and rape. Judge Colton accepted the argu-

ments and appointed Ms. Burke, the Stuart attorney with Catholic Charities, as Tomas' guardian.

Mr. Shiner rejected Ms. Burke's status and decried Ms. Josephs' intervention. He complained that the two immigration lawyers were meddling in his criminal case. But without their involvement, Tomas was headed on a fast track to prison. They saw Tomas as a victim of gender persecution and bristled over the failure of the Mayan community and the system to defend her rights.

"They were willing to sacrifice her for their political motives and their political aspirations," Ms. Josephs says. "A woman's voice in a woman's case gets pushed aside. I felt like the painting *The Scream*. We were screaming, but nobody was listening."

After a year of Spanish lessons, Tomas was fluent enough to understand some of the Telemundo news on the jailhouse TV. She saw a report about two Miami lawyers who had successfully defended a young mother accused of abandoning her infant. She told Ms. Josephs and Ms. Burke that she wanted the lawyers to defend her. The immigration attorneys had heard of the Miami case and already were calling defense lawyers David Kubiliun and Brett Newkirk.

In November, the system again denied Tomas the right to participate in her defense. Circuit Judge Hubert Lindsey refused to hear a motion from Mr. Newkirk to enter the case at Tomas' request. Instead, the judge named West Palm Beach attorney Robert Gershman to represent her. Ms. Burke stayed on as an attorney ad litem - essentially a legal counselor and liaison - but was no longer a legal guardian.

Mr. Gershman was surprised to find an empty file when he took over: "I felt like I was starting from scratch. None of the preparatory work was done."

He took the unusual step of getting an agreement in writing from prosecutors that they would not refuse to negotiate if he built a defense. He took depositions, interviewed experts and wrote motions to suppress. He involved Tomas in the preparations and decision-making. He said he was impressed by her capacity to contribute.

Three weeks ago, Mr. Gershman negotiated an extraordinary plea deal. Prosecutors withdrew the murder indictment and agreed to a guilty plea on juvenile child neglect charges. Tomas must serve probation but avoids prison and deportation. She will live with foster parents John and Linda Taft, retirees who split their time between South Palm Beach and Vermont. It was a deal too good to turn down.

"Taking the plea was the hardest decision she and I had to make," Mr. Gershman says. Had there been a trial, "I thought she could win hands down."