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CHAPTER SEVEN

The Political Repression of a Chicano Movement Activist: The Plight of Francisco E. “Kiko” Martínez¹

James Barrera, South Texas College

During the latter half of the twentieth century, the U.S. government attempted to covertly subdue the progressive activity of numerous social justice and civil rights movements in our society. One of the government’s key objectives in this activity involved the political repression of certain leaders of these movements, including Dr. Martin Luther King, Jr. (Black Civil Rights Movement), Malcolm X (Black Nationalist Movement), and Russell Means (American Indian Movement).

Leaders of the Chicano Movement were also among the government’s most scrutinized and pursued “political targets” during this era that spanned through the 1960s and well into the 1970s. For example, Rodolfo “Corky” González, Reies López Tijerina, César Chávez, Dolores Huerta, and José Angel Gutiérrez were targeted for their involvement in movements that advocated for social change, economic justice, and political equality. They often experienced harassment, arrest, and incarceration by federal, state, and local law enforcement officials for their role and participation in civil rights protest activity that was constitutionally protected.² Sometimes, government officials went as far as to resort to unlawful modes of repression to falsely implicate and imprison activists because

of their supposed threat to American democracy and its status quo, and for allegedly having ties to the Communist Party.³ Another lesser-known movement participant who merits particular attention and recognition is Francisco E. “Kiko” Martínez, a Chicano activist attorney from the southern Colorado city of Alamosa.

COINTELPRO

Before analyzing the major events of Martínez’s life as a “political target,” we must better understand the FBI’s counter-intelligence program known as COINTELPRO. This program, initiated in 1956 by then-FBI Director J. Edgar Hoover, was organized to identify and incriminate American Communist Party activists and their supporters. Although FBI officials had often “disrupted” the activities of suspected radical groups since the early 1940s, the creation of COINTELPRO represented a formal program based on written protocol that permitted the use of extralegal methods against those perceived as dissident rabble-rousers or “un-American.”⁴ COINTELPRO was a product of the ostensible “Age of McCarthyism,” which was fueled by the anti-communist hysteria that swept the nation during the 1950s.

Hoover summarizes COINTELPRO’s original goal to eradicate communist ties in America:

The forces which are most anxious to weaken our internal security are not always easy to identify. Communists have been trained in deceit and secretly work toward the day when they hope to replace our American way of life with a Communist dictatorship. They utilize cleverly camouflaged movements, such as peace groups and civil rights groups to achieve their sinister purposes. While they as individuals are difficult to identify, the Communist party line is clear. Its first concern is the advancement of Soviet Russia and the godless Communist cause. It is important to learn to know the enemies of the American way of life.⁵

By adhering to this theory, Hoover believed all social movements discreetly advocated the spread of communism in the United States during the

mid-twentieth century. However, the FBI has yet to prove beyond a reasonable doubt that communist ties existed with any civil rights and anti-war groups. During the 1960s Civil Rights Movement and counterculture era, COINTELPRO's main objective was "to expose, disrupt, misdirect, discredit, or otherwise neutralize *the enemies of the State*."⁶ This purpose was achieved in large part by imprisoning movement activists who were "criminalized" through false charges, frame-ups, and slanderous publications printed in their names.⁷ According to legal analyst Brian Glick, one of the four methods of COINTELPRO-type political repression employed by both the FBI and police included the exploitation of the judicial system to wrongfully incarcerate dissidents.⁸ Examining Martínez as a movement activist who experienced governmental persecution is a case in point.

KIKO MARTÍNEZ AS POLITICAL TARGET

Prior to facing political repression in 1973, Martínez represented numerous Chicano clients, including students, prison inmates, and workers. In essence, his clients were most often those who could not afford to hire legal assistance. Most likely, however, FBI officials targeted Martínez for COINTELPRO surveillance and repression for his participation in Chicano movement activities and for his outspoken criticism of Colorado's state penitentiary system.⁹ In addition, Colorado's varied criminal justice agencies, with the help of the FBI, probably used the mass media to aid in a campaign that worked to undermine Martínez' social justice activities. Fearing capture and unjust imprisonment, Martínez exiled himself to Mexico in order to protect himself from state-initiated threats to his freedom and life. Seven years later in 1980, Martínez returned to the U.S. to proclaim his innocence to the criminal charges and refute both federal and state government's criminal accusations against him.

Because of the above, I argue that Francisco E. Martínez can be categorized as a "political target." I define a political target as one selected by the federal government "for criminal persecution because of their political activity, when they [government officials] can fabricate evidence against

that person and suppress evidence proving that fabrication, and prosecute a person(s) and put them in prison for any amount of time, including for life.”¹⁰ A brief discussion of Martínez’ background will shed light on why he became a political target. I then discuss in more detail the events that local and state criminal justice and legal officials manipulated in order to aid COINTELPRO agents in the villification of Martínez, and which served to justify the unwarranted repression he endured. I specifically review a key court case brought against Martínez to highlight the cumulative and disadvantageous legal ramifications it had in later legal machinations by local, state, and federal law enforcement and legal representatives.

KIKO MARTÍNEZ BACKGROUND

Francisco Eugenio “Kiko” Martínez was born on November 26, 1946 in Alamosa, Colorado to Mr. and Mrs. José Martínez. He graduated from Alamosa High School in 1964. In 1966, Martínez joined and supported the activities of the Crusade for Justice, a Chicano social justice organization founded by Rodolfo “Corky” González in Denver, Colorado.¹¹ He attended Adams State College in Alamosa where he studied anthropology, sociology, and business administration, and graduated in 1968. In 1970, Martínez served as an intern at Salud y Justicia (Health and Justice), an agency that provided legal, health, and social work assistance for agricultural workers. Throughout his college and law school years, Martínez began training for a life-long career in providing legal services in civil law to underprivileged ethnic Mexican communities, migrant farmworkers, Chicano university students, and families. Martínez’s childhood and adolescent years as a migrant worker and student enabled him to understand the adverse circumstances faced by these people in society, which influenced him to pursue a career as a lawyer to assist them in civil cases.¹² As a young man, Martínez became a product of the Chicano Movement, which promoted the political and civil rights of ethnic Mexican people.

In 1971, he enrolled at the University of Minnesota’s School of Law where he emerged as a strong advocate for prison inmates and Native American and Chicano legal rights. During his early years as an attorney in the 1970s, Martínez often represented and counseled Chicano inmates at the Colorado State Penitentiary at Canon City and members of the United

Mexican American Students (UMAS) organization at the University of Colorado—Boulder. Additionally, Martínez defended numerous individuals charged with crimes in Colorado and New Mexico.¹³

Martínez first gained attention for expressing his discontent with the criminal justice system when refusing to answer one question on the Colorado state bar exam after finishing law school in 1971. He contended that this question was offensive and demeaning to Native Americans. According to Martínez, such a question characterized Native Americans as “squaws,” like in the movie *Little Big Man*, which offered an inaccurate and false portrayal of native peoples’ culture in America.¹⁴ He and American Indian Movement activists opposed the inclusion of the question on the state bar exam by protesting outside the Supreme Court of Colorado in October 1971. However, this protest did not actually lead to the disallowance of the question at the time. Martínez’s refusal to respond to the question represents his opposition to the use of racial stereotypes of Native Americans not only on state bar exams, but in the U.S. legal system. Despite Martínez’s refusal to answer this question in order to protest its inclusion on the bar exam, he passed and received his law license.¹⁵

In the early 1970s, Martínez joined the Crusade for Justice, formed by renowned Chicano Movement leader Rodolfo “Corky” González. Martínez spoke out against the adverse conditions faced by Mexican American prison inmates in the Colorado penal system. Prior to completing law school, Martínez participated in summer internships and worked under Jonathan B. Chase in the Colorado Rural Legal Services. This type of work experience helped him learn about the types of mistreatment against Chicano prisoners. Martínez recalled that certain inmates reported to him that various prison officials routinely whipped them without provocation. In 1971, Martínez organized the Latin American Development Society in the Colorado prison system in response to such mistreatment and to assist inmates in the forming of a self-help group. This group represented Martínez’s call for reform of the state prison system. He also questioned prison officials about why Chicanos comprised fifty percent of all incarcerated persons in the state penitentiaries. Consequently, prison administrators regarded his argument as insignificant and made very little effort, if any, to prevent the abuse of Chicano inmates.¹⁶

Because of his continued involvement with the Crusade for Justice while gaining educational and professional credentials and practicing as a lawyer, Kiko Martínez became a prime target for law enforcement surveillance during the early to mid-1970s. His part in the controversial Ricardo Falcón murder case served to arouse further suspicion for him. His status as a political target became solidified with his alleged roles in attempted Denver city bombings.

MARTÍNEZ'S WORK IN THE RICARDO FALCÓN MURDER CASE

While active in the La Raza Legal Association and the Mexican American Legal Defense and Educational Fund (MALDEF) in 1972, Martínez served and testified in the famous murder trial of Chicano activist and school teacher Ricardo Falcón. The murder occurred while Ricardo Falcón and a small group of his peers, including Martínez, were traveling from Fort Lupton, Colorado to the national convention for the La Raza Unida independent political party in El Paso, Texas on August 30, 1972. The controversy surrounding Falcón's murder attracted much attention from the Chicano community both in Colorado and at the national level. Martínez became closely involved in the case in order to positively identify Falcón's murderer.

The murder occurred shortly after the group had stopped at an Orogrande, New Mexico gas station when their car overheated. An argument developed when gas station owner Perry Brunson refused car driver Florencio Granado's request to water down the car while the gas tank was filling. In fact, Brunson's response to Granado's request was, "We don't waste water around here. It's expensive." Falcón took offense to the reply and involved himself in the argument between Brunson and Granado. Upon Brunson's return to the station office, Falcón suspected that Brunson had a gun and asked if he did so. Brunson sarcastically remarked, "Come over here and find out." Falcón complied and shortly after entering the station office, gunfire rang out leaving Falcón dead from a wound suffered by a 38 police special pistol.

Immediately after the shooting occurred, Falcón's companions went to businesses nearby in an attempt to telephone the shooting to the local

police. They were refused service. However, police arrived at the scene minutes after the shooting upon receiving a telephone call from Brunson. An ambulance finally arrived an hour after Falcón was shot. After police apprehended and detained Brunson for a short period of time, Robert Bradley, local magistrate and Brunson's personal friend, released him on his own recognizance.¹⁷

The news of Falcón's murder became widespread, and prompted many in the Chicano community to speak out against Brunson, the prime suspect of the shooting. Among them was South Dakota Senator George McGovern who denounced Brunson's action as "an act of insanity."¹⁸ He further remarked, "I am shocked at the killing of young Richard Falcón. I assure you of my efforts to see that justice is done in this act of insanity. I am contacting the U.S. attorney general to see that immediate action be taken to initiate investigative proceedings."¹⁹ However, McGovern later retracted his statement after requested to do so by Brunson's lawyer, Albert J. Rivera. Rivera made the request "in the interest of fair play," implying that Brunson was innocent of the murder charge until proven guilty.²⁰

Raza Unida Party convention organizers expressed their outrage over the incident upon hearing about Falcon's tragic death. In a telegram to President Richard Nixon and attorney general Richard Kleindienst, they demanded a federal investigation into the murder, which stated in part:

Cannot an American citizen obtain emergency services in American cities, on American roads without fear for his life? Cannot a Chicano attend a political convention without fear or loss of his life? The National Office of the Raza Unida Party and all state delegates present hereby demand immediate investigation of this wanton, racist murder. The Perry Brunsons of America must be brought to justice.²¹

Shortly after Falcón's death, Kiko Martínez and fellow Colorado attorney Kenneth Padilla investigated the incident to suggest a possible course of legal action. They also served as the spokesmen for Falcón's widow, Priscilla. Their work was instrumental in bringing forth a criminal manslaughter case against Brunson in December of 1972. The trial, held

in Alamogordo, New Mexico, came to a surprising and stunning end after two days when Brunson was acquitted of the manslaughter charge.

Chicano activists and members of Falcón's family were not present when the verdict had been announced due to supposedly jury selection proceedings for another trial taking place in the same courtroom.²² Martínez and Padilla could not attend the verdict hearing as well since police had escorted them from the courtroom. These actions provoked an altercation between the lawyers and police with one officer shoving Martínez down the courtroom stairs.²³

Because Martínez actually challenged the American legal system that unjustly allowed for violence to be perpetrated against Chicano activists, COINTELPRO tactics were soon put into place against him. He quickly became singled out by the media for his activist work and rebellious lawyering in the Brunson manslaughter trial. He was also scrutinized for acting "as an informal spokesman for Mrs. Priscilla Falcón during the trial of a man accused of manslaughter in connection with the shooting death of her husband, Richard."²⁴ From here on, federal officials began to closely study Martínez' activities.

THE BEGINNING OF MARTÍNEZ'S POLITICAL REPRESSION

Martínez first experienced unjust political repression while attending a Chicano and Native American Unity conference in Scottsbluff, Nebraska. The conference was held to address social and political issues concerning racial prejudice against Chicana/o and Native American residents in the local area. The incident occurred on January 15, 1973, when Scottsbluff law enforcement officials stopped the car that Martínez and a friend, Francisco Luevano, were driving. Police officers immediately conducted a search of the car, and later arrested Martínez and Luevano on the charge of possessing an explosive device for what police believed was a Molotov cocktail in the car's backseat. According to Martínez, police charged him with the possession of an improvised explosive device.²⁵ Moreover, he asserted that police justified their search of the vehicle based on police finding old rags that smelled of gasoline in the truck of the car.

Both Martínez and Luevano were tried before the Nebraska Supreme Court on this federal criminal charge, and were found “not guilty” since the police search and seizure was declared unconstitutional as it violated the Fourth Amendment.²⁶ Martínez’ trumped up arrest and subsequent trial were indicative of law enforcement tactics that were carried out in an attempt to neutralize Martínez’ social justice agenda.²⁷ This incident possibly represents federal law enforcement’s initial effort to persecute him via the legal system. Martínez believes the judge suppressed evidence and that the police had no reasonable cause to search the automobile.²⁸

DENVER BOMB HYSTERIA

In October 1973, government officials bolstered their efforts to repress Martínez by attempting to indict him in Denver, Colorado on trumped-up criminal charges. The charges included the mailing of three package-box size bombs to African American policewoman Carol Hogue, to local school board member Robert Crider, and to the Two Wheeler Motorcycle Shop. This came during a time when numerous criminal allegations were being leveled by the Denver police against those involved in the Crusade for Justice organization.²⁹ In particular, they alleged that members of the Crusade for Justice were responsible for making and strategically planting homemade bombs throughout numerous locations in the city as a means to violently carry out their social justice agenda. These allegations deeply implicated key Crusade for Justice members in the “bomb hysteria” that swept Denver and Boulder, Colorado throughout the early 1970s.³⁰

There is little doubt that real hostilities existed between the police and the Crusade for Justice and worked to exacerbate perceived and real injustices. For example, Denver law enforcement officers killed a Crusade for Justice activist during a violent confrontation that ensued outside the organization’s headquarters in 1973.³¹ It was during this turbulent period that Denver policewoman Carol Hogue, who was involved in the shootout, alleged that Martínez sent her a bomb in the mail. Shortly thereafter, Robert Shaughnessy, head of the Denver Police Bomb Squad, confirmed this allegation and another allegation of Martínez’ attempt to bomb the Two Wheeler Motorcycle Shop in north Denver.³² These allegations resulted in criminal charges and an indictment being brought forth against Martínez.³³

Probably two of the most well-publicized and tragic incidents, however, were two car bombings that took place in Boulder in May of 1974 and claimed the lives of six young Chicano activists. The first car bombing claimed the life of Kiko's 25 year-old brother, Reyes Martínez, along with 21 year-old Neva Romero and 23 year-old Una Jaakola. Two days later a second car bombing took the lives of Florencio Granado, 32, Heriberto Teran, 24, and Francisco Dougherty, 22. Crusade for Justice activists believed that those who died in the explosions were victims of police and governmental conspiracies intended to neutralize their social justice activities. Furthermore, the subsequent investigation into the six deaths was perceived more as a means of identifying Colorado's Chicano activists' network than an attempt to bring the perpetrators to justice, as various family members and friends of the blast victims were later subpoenaed for investigation by federal authorities.³⁴

Adding to the hysteria were bomb explosions the following year that occurred at Boulder's Flatiron Elementary School, the Colorado University Police Department building, and at the Hall of Justice on Boulder's Courthouse Square.³⁵ These incidents were blamed on Crusade for Justice activists. In 1975, the Crusade for Justice was once again singled out for the placement of a bomb at the meeting location of the International Association of Chiefs of Police in Denver.³⁶

POLITICAL EXILE AND RETURN

Strangely, none of the bombs that Martínez allegedly mailed exploded since law enforcement officials "miraculously" arrived just before they went off. Shortly after his indictment, Martínez' license to practice law in Colorado was suspended. *The Denver Post*, and the federal government offered a reward of up to \$3,000 for information leading to Martínez' arrest. Law enforcement officials first attempted to apprehend him in Denver. However, Martínez managed to elude capture when he and a female friend were driving to their apartment complex.

It was while en route to the apartment complex when they both heard the news report on their car radio that police had unsuccessfully raided two homes in order to try to take him into custody.³⁷ The report further

indicated that Martínez was presumed armed and dangerous. Upon hearing this radio news report, Martínez believed it was a form of intimidation that intended to create widespread hysteria since the police were eager to arrest him.³⁸ Moreover, Martínez feared an assassination attempt on his life by police who were instructed to shoot him “on sight,” underscoring the COINTELPRO technique of sanctioned use of extralegal force or violence.³⁹ Concerned for his safety and wanting to avoid a violent confrontation with police, Martínez left the country for Mexico where he went into exile for seven years.

On September 3, 1980 Martínez attempted to return to the U.S. by crossing the border illegally at Nogales, Arizona under the alias of José Reynoso Díaz.⁴⁰ He used the alias in order to prevent border agents from extraditing him to Colorado if apprehended. His plan almost worked as U.S. Border Patrol agents were unaware that he was “wanted” by Colorado law enforcement officials when he was eventually apprehended, taken into custody, and charged with entering the U.S. illegally and failing to prove citizenship. They became suspicious, however, after discovering a journal in his backpack documenting his childhood years in Alamosa.⁴¹

In seeking to verify Martínez’ identity, officials gave his picture to an army captain at nearby Fort Huachuca who planned to attend an FBI-sponsored conference in Denver, Colorado. At this conference, a Colorado Bureau of Investigation agent positively identified Martínez after seeing the picture.⁴² His identity was verified just before officials were ready to deport him back to Mexico. One official involved in the case expressed relief after receiving confirmation regarding Martínez’s identity saying, “In another 24 hours, we would have lost him.”⁴³

Martínez now faced a formidable challenge both in federal and state courts to avoid incarceration on what seemed to be fabricated charges based on circumstantial evidence. What’s more, the mobilization of bias against Martínez began almost immediately. To illustrate, a local TV news report suggested that Martínez “fled [to Mexico] to avoid prosecution and remained a fugitive until his recent arrest on the Arizona-Mexico border.”⁴⁴ Another TV news report in Denver announced, “Exactly where Martínez spent the last seven years isn’t known but there’s some specula-

tion that he was in Cuba.⁴⁵ A newspaper report similarly echoed that he traveled to Cuba at one time during his exile in Mexico.⁴⁶ Altogether, the media coverage portrayed Martínez as a treacherous political dissident, which worked against him in court proceedings. Once again, this strategy portrays effective methods that were put into place by COINTELPRO operatives.⁴⁷

MARTÍNEZ GOES ON TRIAL

Martínez's long and arduous quest to prove his innocence of the charges brought against him began in the fall of 1980. A grand jury recommended his bond be set at \$150,000, but U.S. District Judge Fred M. Winner decided to set the bond at \$1 million. Kenneth Padilla, Martínez' attorney, argued that the bond was "almost ransom" and more so a denial of bail.⁴⁸ This argument proved successful as Judge Winner later reduced the bond to \$400,000 for the federal charges.⁴⁹ In addition, federal prosecutor John Barksdale could not present substantial evidence that merited a \$1 million bond. In fact, Barksdale admitted that no credible evidence was presented on the issue.

Even so, Barksdale believed that the court should take into account information from newspaper articles revealing that Martínez' fingerprints were discovered on the bombs.⁵⁰ Judge Winner disagreed with Barksdale, contending that the newspaper articles were not admissible proof suggesting Martínez' guilt or innocence. Judge Winner went on to state:

If I ever read any such newspaper stories, I don't remember them, but I couldn't disagree more with the government's claim that a man should be deprived of his liberty on the basis of newspaper stories when the government, for reasons best known to it, elected to present no evidence suggesting the defendant's guilt. This argument of the prosecution I emphatically and unqualifiedly reject. Unsworn newspaper reports do not do away with the presumption of innocence applicable to all defendants. If I ever rule based on newspaper accounts, I hope it's my last day on the bench.⁵¹

In any case, a few of Martínez' family members and close friends posted their sixteen homes as bail for the \$400,000 bond, expressing their confidence that he would not flee the city after his release. The court accepted the properties as sufficient bail payment, and Martínez was released to the custody of his attorney Kenneth Padilla on October 24, 1980.

As various court rulings went on, it appeared more and more that local, state, and federal law enforcement and legal officials were conspiring to falsely imprison Martínez. During a preliminary hearing before Chief Denver County Court Judge George Manerbino, state prosecutors requested to submit as evidence fingerprint records of Martínez taken by local law enforcement officers who unlawfully arrested him in Scottsbluff, Nebraska in 1973. Kenneth Padilla argued that the court dismiss such evidence since Martínez' arrest in Nebraska was ruled unconstitutional, and told Manerbino to give "full faith and credit" to the findings of the Nebraska courts and discount the fingerprint record.⁵² However, Deputy Denver District Attorney and Prosecutor Cass García refuted Padilla's contention and maintained that Manerbino was not bound by the Nebraska rulings since only a district court judge has the authority to dismiss fingerprint evidence.⁵³ Thus, Manerbino allowed prosecutors to submit the fingerprint record as admissible evidence in the case against Martínez.

Additionally, law enforcement ineptitude reinforced conspiratorial notions concerning Martínez' trial. The Denver police reported in November of 1980 that they had lost the bomb that Martínez allegedly sent to local school board member Robert Crider in 1973.⁵⁴ Denver Bomb Squad Head Robert Shaughnessy, embarrassed and baffled about the missing bomb, testified that custodial personnel apparently discarded the evidence.⁵⁵ This misfortune impacted the federal cases against Martínez as federal prosecutors could not convince the court that there was a pattern of deviant, malicious behavior without the evidence.

MARTÍNEZ'S FIRST FEDERAL (MIS)TRIAL

U.S. District Judge Fred M. Winner scheduled Martínez' first federal trial for January 27, 1981 in Pueblo, Colorado. Unfortunately, Winner

ordered separate trials for each of Martínez' three bombing charges.⁵⁶ The January 27 trial was centered on the 1973 attempted mail bombing of Denver policewoman Carol Hogue. Before the trial began, Martínez' attempt to have the case dismissed due to local bias towards him and vindictive prosecution was denied by Judge Winner.⁵⁷ Also to no avail, Kenneth Padilla called for a mistrial since federal prosecutors dismissed all potential jurors of Hispanic descent.⁵⁸ Luckily, both plaintiffs and defendant's attorneys agreed to disallow any reference to the case involving Martínez' 1973 arrest in Nebraska.⁵⁹

During the trial's opening statement, Los Angeles defense attorney Leonard Weinglass, renowned for his work in various trials involving political activists, offered an explanation as to why police claimed to have found Martínez' fingerprints on the bomb package sent to policewoman Carol Hogue. He argued that the fingerprints actually came from a piece of poster board where he did legal work at the University of Colorado, Boulder.⁶⁰ However, federal prosecutors wanted to use the print evidence against Martínez and offered their interpretation concerning such evidence. One legal document filed by the prosecutors' states:

The Government intends to use evidence that the defendant's fingerprints were recovered from newspapers surrounding dynamite near Alamosa, Colorado, in 1972, and that the defendant was arrested in Scottsbluff, Nebraska, driving a car in which was recovered a Molotov cocktail to establish proof of a motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident as to the crimes charged in the indictment.⁶¹

The use of the fingerprint evidence was an issue of contention for both sides throughout the trial.

CONTROVERSY LEADING TO MISTRIAL ENSUES

During another moment in the Hogue trial, jury members Jacquelyne Wolfe and Charles Kelly approached Judge Winner to complain to him about t-shirts worn by certain members of the audience in the courtroom

that stated on the front side, “Free Kiko.” Defense Attorney Weinglass requested a mistrial on the basis that the two jurors’ complaint reveals “the anger the jurors are feeling towards the defendant.”⁶² After hearing all arguments on the issue, Judge Winner informed the two jurors that he could not tell audience members how to dress in the courtroom, and cautioned them not to reach a verdict based on the type of clothing worn by spectators.⁶³ This would not be the case in subsequent trials as Judge Winner claimed he wanted to “prevent clothing which could be construed as intimidating to the jury” and the “wearing of clothing containing printing which may be interpreted as attempted communication with the jury.”⁶⁴

In a similar vein, however, the two jurors also complained to Judge Winner that one member of the defense team wore dark sunglasses during the court proceedings. They viewed this as suspicious and inappropriate. Kenneth Padilla believed the jurors’ comments were uncalled for and pointed at apparent “prejudice toward Mr. Martínez.”⁶⁵ The trial did come to a surprising end when Judge Winner granted a mistrial at the request of federal prosecutors and not by the defense as requested earlier.⁶⁶ Judge Winner did reveal that the mistrial motion would be granted only if the defense joined in on the motion. This gave prosecutors another opportunity to file the same type of charges against Martínez without constituting “double jeopardy.”⁶⁷

Defense attorneys offered their interpretations as to why the mistrial occurred. Kenneth Padilla stated, “Their (federal prosecutors’) case was going badly for them and they wanted to extricate themselves from a bad case.”⁶⁸ Padilla further believed that prosecutors called for the mistrial fearing that Martínez might win the case on appeal if found guilty because of the two jurors’ complaints against him.⁶⁹ Defense Attorney Leonard Weinglass alleged that the U.S. attorney’s office decided that the case was a “no-win” situation according to what they read in the newspapers.⁷⁰ On the other hand, the media offered an inaccurate interpretation of why Judge Winner reluctantly granted the mistrial. They reported that the mistrial motion was granted at the request of the defense rather than by the prosecution. Indeed, a Denver television news report announced that “U.S. District Judge Fred Winner granted the defense request for a

mistrial on the grounds that two jurors have shown ‘hostility’ toward Martínez.”⁷¹

Although a mistrial was not the same as an acquittal, it did boost the confidence and optimism of the defense team. The defense felt that the prosecutors’ request for a mistrial represented a moral victory in the government’s war of repression against Martínez. In expressing his sentiment about the mistrial, Wineglass summed up his assessment of the mistrial stating, “We didn’t have absolute confidence in this jury, but what ultimately happened was that the government had even less confidence in their case. This was the first time the government has been stopped (in the Martínez cases) since 1973. I think the tide (momentum in court) is reversed.”⁷² In expressing his sentiment about the mistrial, Martínez remarked, “This is just a partial victory—the final victory will be ours (Chicano people).”⁷³ Additional controversy and scrutiny continued to mar the court’s proceedings when a startling discovery was made about Judge Fred Winner.

CONSPIRACY AGAINST MARTÍNEZ IN THE COURTROOM REVEALED

Unbeknownst to most participants and the public during the Hogue mistrial was that Judge Winner had agreed to have a hidden camera installed in the courtroom at the behest of the FBI. Two days after the trial had started, Judge Winner secretly met in his hotel room with the FBI, three deputy U.S. Marshals, federal prosecutors, Denver police officials, the court clerk, and his personal secretary to arrange the method for installing the camera. Defense attorneys representing Martínez were not informed of the private meeting and according to a letter written by Winner: “The defendant and his attorneys couldn’t have been intimidated because they wouldn’t have known (about the secret camera). I thought I had a duty to do exactly this (place the hidden camera in the courtroom) if the federal courts are to survive.”⁷⁴ Winner later further revealed his negative bias towards Martínez by elaborating as to why he cooperated with FBI officials to place a camera in the courtroom, stating:

The aborted trial was a disaster. Attempted jury intimidation was apparent to everyone. A juror doesn't have to be very perceptive to understand having a group of spectators (court audience) glare at him and having one or more of them run a finger across his throat to threaten a slashed juror's throat. Yet, to prove that conduct in the future is less than easy. Persons of national notoriety attended the trial and it is evident that the defense is well financed. If there is acquittal, efforts to intimidate future juries throughout the United States will accelerate...I saw what was going on, and I talked to the marshals who saw and were worried. I notified the FBI and I authorized the FBI to install a concealed camera which would provide the evidence to convict in a future obstruction of justice case.⁷⁵

These dubious legal machinations indicate that an unraveling plot to thwart the defense attorneys' strategies in the case was the reason that a mistrial in the case occurred. Another document filed by defense attorneys further reveals that Judge Winner told U.S. Attorney Barksdale that he would grant a motion for a mistrial whenever Barksdale requested. Moreover, Judge Winner advised federal prosecutor Barksdale to wait to motion for a mistrial until defense attorneys had presented their case strategy.⁷⁶ Furthermore, Judge Winner reportedly told another federal attorney that he wanted to prolong the mistrial ruling in order to have an opportunity to obtain obstruction of justice evidence for the prosecution.⁷⁷ Upon becoming aware of the hidden camera and secret meeting first reported in the *Denver Post* and *Rocky Mountain News*, defense attorneys argued that Judge Winner's actions negated any possibility that Martinez could receive a fair trial.⁷⁸ They contended that key trial witnesses who attended the secret meeting on January 29 had their "sense of right and justice" significantly influenced by Judge Winner.⁷⁹

The court record also reveals another bizarre occurrence regarding Winner's behavior in a Pueblo, Colorado bar. Shortly after Winner declared the Hogue attempted bombing proceedings a mistrial, he reportedly was seen wearing a "Free Kiko" t-shirt under his sport coat while meeting socially with various court personnel and U.S. Marshals.⁸⁰ The controversial and turbulent events associated with Martinez's mistrial

both in and out of the courtroom portrays the type of overzealous and vindictive prosecution he endured from federal government prosecutors and law enforcement agencies during the eight other court trials he later faced throughout the 1980s to prove his innocence.

CONCLUSION: FRANCISCO “KIKO” MARTÍNEZ’S HISTORICAL LEGACY

Shortly after the 1980 mistrial, Judge Winner removed himself from future court proceedings involving Kiko Martínez. U.S. District Judge Luther Eubanks from Oklahoma was appointed to hear motions to dismiss the three attempted bombing charges filed against Martínez. During 1981, the United States of America v. Franke Eugenio Martinez federal case pertaining to Carol Hogue was dismissed because of Judge Winner’s secret dealings to gain a tactical advantage in future court proceedings. “Winnergate,” as the legal scandal committed by the government against Martínez came to be known, led to all state charges in Colorado being dismissed in September 1981. In December of the same year, a special federal appeals court panel ruled that Judge Winner acted improperly during the Hogue attempted bombing case.⁸¹ Later court cases involving Martínez took place outside of Colorado since many of the U.S. district court and appellate judges in Colorado admitted that they had a close association with Judge Winner.⁸²

The dismissal of the Colorado state charges left only two federal cases against Martínez dealing with the attempted bombings of Denver school board member Robert Crider and the Two Wheeler Motorcycle Shop.⁸³ In March 1982, the government appealed a second time for permission to use evidence from the 1981 mistrial and call for an investigation to ascertain what happened to Martínez during his exile in Mexico (1973-1980). He subsequently won this appeal. Martínez achieved an important legal victory in federal court in November 1982 when the jury found him “not guilty” of the government’s charges that he mailed a bomb to the Two Wheeler Motorcycle Shop. On August 15, 1983, the rest of the federal case against Martínez was dismissed and the government appealed for a third time. The government eventually dismissed the case due to inconclusive evidence against him.

Only six weeks after federal prosecutors failed to convict Martínez on any of the 1973 charges, federal persecution against him began anew. FBI agents armed with machine guns arrested him outside his home in Alamosa without warning and accused him of giving false information to officials at the Arizona-Mexico border when using the alias “Jose Reynoso Diaz” while attempting to cross the border in 1980.⁸⁴ In 1986, U.S. District Judge William Browning ordered Martínez to serve ninety days of a five-year prison sentence for concealing his true identity when crossing the border.⁸⁵ Martínez successfully appealed the conviction regarding his use of an alias when the 9th U.S. Circuit Court of Appeals in Arizona ruled by a vote of 2-1 that the use of an assumed name did not constitute perjury.⁸⁶ With this victory, the government’s political repression against him ended. In assessing what he had endured in the courtroom against federal and state prosecution, Martínez commented, “It’s been a heck of a good education about the legal process and about political repression in America.”⁸⁷

In sum, Francisco “Kiko” Martínez’ plight in proving his innocence in court reveals the type of the tactics orchestrated by local, state, and federal officials against social movement activists of the modern Civil Rights era (1960s – 1970s). Martínez became a government political target due to his Chicano Movement ties and leftist political views that were often expressed through his community and legal work. The evidence suggests the manner in which government authorities prosecuted Martínez, which fits the pattern of political persecution experienced by other more well-known movement activists of the 1960s and 1970s. What’s more, it appears that legal authorities likely went as far as to falsify evidence against Martínez to imprison him indefinitely. One major actor instigating such political repression possibly includes the FBI counter-intelligence program known as COINTELPRO, which had been widely active and in full operation from the mid-1950s until 1971. Examining Martínez as a target of governmental persecution highlights the importance of his social justice and political activism since the early 1970s. His work in advocating the political, civil and human rights of the ethnic Mexican and Latino communities that began at that time continues today.

Endnotes

1 The author served as a graduate fellow in the Center for Southwest Research at the University of New Mexico, Albuquerque, where he completed archival processing of the Francisco E. “Kiko” Martínez Papers during the 2002-2003 school year. He also rewrote parts of the Martínez Papers manuscript collection inventory or finding aid. Please be aware that the archivists at the Center for Southwest Research may have rearranged and/or renamed a few parts of the Martínez Papers since 2003. The author is a current full-time history instructor at South Texas College in McAllen, Texas, and will be receiving a doctorate in history from the University of New Mexico (Albuquerque) in May 2007.

2 Brian Glick, *War at Home: Covert Action Against U.S. Activists and What We Can Do About It* (Boston: MA: South End Press, 1988), 9.

3 Ibid.

4 “Political Counterintelligence” by Athan Theoharris (date created unknown) <<http://www.icdc.com/~paulwolf/cointelpro/theoharris.htm>> [date accessed: 16 June 2005]; David Cunningham *There's Something Happening Here: The New Left, the Klan and FBI Counterintelligence* (Berkeley: University of California Press, 2004), 8.

5 Hoover, statement, July 26, 1950 (Harry S. Truman Library, Bontecore Papers), from *Ideological Warfare: The FBI's Path Toward Power*, Frank M. Sorrentino, Associated Faculty Press, Inc. 1985. Cited from “COINTELPRO: The Untold American Story” (date created unknown) <<http://www.icdc.com/~paulwolf/cointelpro/coinwcar3.htm>> [date accessed: 10 June 2005].

6 FBI letter, 25 August 1967. Cited from Brian Glick *War at Home: Covert Action against U.S. Activists and What We Can Do About It* (Boston, MA: South End Press, 1988), 9. Phrase also cited from “COINTELPRO: The Untold American Story” (date created unknown) <<http://www.icdc.com/~paulwolf/cointelpro/coinwcar3.htm>> [date accessed: 10 June 2005].

7 “How COINTELPRO Helped Destroy the Movements of the 1960s” (date created unknown) <<http://www.aztlan.net/covert.html>> [dated accessed: 11 November 2002].

8 Brian Glick, *War at Home: Covert Action Against U.S. Activists and What We Can Do About It* (Boston: MA: South End Press, 1988), 10. Glick contends that FBI officials used the legal system to intentionally harass or intimidate various movement activists.

9 The author has been unable to locate FBI or COINTELPRO documentation to verify that the federal government intended to silence and imprison Francisco “Kiko” Martínez for participation in Chicano civil rights movement activities. However, the author reveals information from legal records of Martínez’s court cases to underscore the federal government’s intention to bring forth criminal charges against him based on circumstantial evidence, which fits the method or pattern of how the government prosecuted other movement activists.

- 10 “COINTELPRO: The Untold American Story” (date created unknown) <<http://www.icdc.com/~paulwolf/cointelpro/coinwcar3.htm>> [date accessed: 10 July 2005].
- 11 Series III, Boxes 23-25; and Series IX, Box 1 (oversize material) of the FEM Papers contain archival material on the activities of the Crusade for Justice and the Chicano Movement in Colorado. During an interview with the author via telephone, Martínez indicated that he did not hold a leadership position nor played a very active role in the Crusade for Justice. In addition, he was not endorsed nor funded by this group.
- 12 Francisco “Kiko” Martínez, telephone interview with author, 25 August 2006.
- 13 *The Case of Francisco “Kiko” Martínez: A Profile of Racist Political Repression*, booklet published by the Francisco E. Martínez Defense Committee, Alamosa, Colorado, 1981; *El Caso de Kiko Martínez*, information sheet published by Francisco E. Martínez Defense Committee, Alamosa, Colorado, date unknown. Francisco E. “Kiko” Martínez Papers, Box 19, Center for Southwest Research, General Library, University of New Mexico. Henceforth, I will refer to the archival documents contained in the Martínez Papers as “FEM” in the rest of the footnotes.
- 14 Francisco “Kiko” Martínez, telephone interview with author, 25 August 2006.
- 15 Francisco “Kiko” Martínez, telephone interview with author, 25 August 2006; and Francisco E. “Kiko” Martínez Papers, Manuscript Collection Inventory, Biography section, Center for Southwest Research, General Library, University of New Mexico, Albuquerque, 1.
- 16 Ibid.
- 17 *At the Hands of Anglo-America*, Richard Falcón murder investigation document written by Mexican American Legal Defense and Educational Fund attorneys Kenneth Padilla and Francisco Martínez, and investigator Julius Martínez, date unknown, Folder 25, Box 21 of FEM.
- 18 McGovern Comments on Falcon Killing, telegram, La Raza Unida National Convention Headquarters, El Paso, Texas, 1 September 1972, Folder 35, Box 21 of FEM.
- 19 Ibid.
- 20 *Rocky Mountain News*, 10 September 1970, Folder 27 “Brunson Criminal Trial: newspaper stories,” Box 21 of FEM.
- 21 *Albuquerque Journal*, 1 September 1970, Folder 27, Box 21 of FEM.
- 22 “Killer of Ricardo Falcón is Freed But,” *El Grito Del Norte* (Las Vegas, NM), Vol. 2, No. 10 (December 1972), 1, Folder 33, Box 21 of FEM.
- 23 “Killer of Ricardo Falcón is Freed But,” *El Grito Del Norte* (Las Vegas, NM), Vol. 2, No. 10 (December 1972), 1, Folder 33, Box 21 of FEM; and Francisco “Kiko” Martínez, telephone interview with author, 25 August 2006.
- 24 *Rocky Mountain News*, 15 January 1974, Folder 27, Box 21 of FEM.
- 25 Francisco “Kiko” Martínez, telephone interview with author, 25 August 2006 and 20 April 2007.

26 See Folder 5, Box 2 of FEM Papers containing more detailed information on Martínez's arrest and case trial in Scottsbluff, Nebraska; and Francisco "Kiko" Martínez, telephone interview with author, 25 August 2006 and 20 April 2007.

27 Brian Glick, *War at Home: Covert Action Against U.S. Activists and What We Can Do About It* (Boston: MA: South End Press, 1988), 10. Glick suggests that law enforcement officials presented fabricated evidence as a pretext for the unjust arrests of various movement activists.

28 Francisco "Kiko" Martínez, telephone interview with author, 25 August 2006 and 20 April 2007. During my interview, Martínez revealed that he borrowed the vehicle that he and Luevano were driving, but could not recall the name of the person who owned it.

29 For a detailed analysis of the FBI's covert action against Corky González and members of the Crusade for Justice in the 1970s, read Ernesto B. Vigils *The Crusade for Justice: Chicano Militancy and the Government's War on Dissent* (Madison: The University of Wisconsin Press, 1999).

30 During the 1970s, federal authorities, and state and local police alleged that numerous movement activists in Colorado purposely built and planted bombs throughout Denver, claiming that activists' political activity entailed violence. For further information please read Ernesto B. Vigils *The Crusade for Justice: Chicano Militancy and the Government's War on Dissent* (Madison: The University of Wisconsin Press, 1999), and "Educating Rita: School Board Member Rita Montero Found Herself in Explosive Times in the Seventies" (7 June 1995) <<http://ourworld.compuserve.com/homepages/JWCRAWFORD/ww1.htm>> [date accessed: 7 May 2003].

31 "Educating Rita: School Board Member Rita Montero Found Herself in Explosive Times in the Seventies" (7 June 1995) <<http://ourworld.compuserve.com/homepages/JWCRAWFORD/ww1.htm>> [date accessed: 7 May 2003].

32 Francisco "Kiko" Martínez, telephone interview with author, 25 August 2006 and 20 April 2007. During my two phone interviews, Martínez indicated that this motorcycle shop operated across the street from an Italian American community that opposed Chicanos and Mexican immigrants moving into the local neighborhood. Martínez further explained that ethnic Mexican residents in this neighborhood sought to change the name of Columbus Park located close to the motorcycle shop. Ethnic tensions became evident in this part of Denver when Chicanos wanted the city to rename the park "La Raza Park" and to abolish Columbus Day as a statewide holiday, which infuriated the Italian American community. According to Martínez, north Denver was also a center of police brutality against Chicano youth under 18 who violated the 10 p.m. city-wide curfew, and against various Chicano adults in the neighborhood. Police claimed that this report(s) of mistreatment was supposedly Martínez's "motive" for sending the bomb to the motorcycle shop.

33 *Rocky Mountain News* (Denver, Colorado), 19 September 1980, Folder 27, Box 20 of FEM.

34 *Ibid.*, 298-299.

- 35 “Educating Rita: School Board Member Rita Montero Found Herself in Explosive Times in the Seventies” (7 June 1995)
<<http://ourworld.compuserve.com/homepages/JWCRAWFORD/ww1.htm>> [date accessed: 7 May 2003].
- 36 Ernesto B. Vigil, *The Crusade for Justice: Chicano Militancy and the Government’s War on Dissent* (Madison: The University of Wisconsin Press, 1999), 307. Also, Boxes 24-25 of the FEM Papers contain archival documents on “Los Seis de Boulder, CO.”
- 37 U.S. Federal District Court for the District of Colorado, photocopy of *Reporter’s Transcript of Jury Trial Opening Statement* from criminal case *United States of America v. Franke Eugenio Martinez*, Civil Action No. 73-CR-414, p. 19, Box 1 of FEM. Author is not sure which folder in Box 1 contains the document.
- 38 Francisco “Kiko” Martínez, telephone interview with author, 25 August 2006.
- 39 Brian Glick, *War at Home: Covert Action Against U.S. Activists and What We Can Do About It* (Boston: MA: South End Press, 1988), 10.
- 40 Francisco “Kiko” Martínez, telephone interview with author, 25 August 2006. During my first phone interview, Martínez explained that he believed the 1980 election of Ronald Reagan represented a better opportunity for him to have a fair trial in the U.S. after ending his exile.
- 41 *Pueblo Star-Journal and Sunday Chieftain*, 19 September 1980, Folder 27, Box 20 of FEM.
- 42 Ibid.
- 43 Ibid.
- 44 TV news transcript, Denver TV coverage of Martínez, 26 December 1980, Folder 4, Box 3 of FEM.
- 45 TV news transcript, Denver TV coverage of Martínez, 18 September 1980, Folder 4 “Television news transcripts, Denver TV coverage (Feb. 1981),” Box 3 of FEM.
- 46 *Pueblo Star-Journal and Sunday Chieftain* (Pueblo, Colorado), 17 November 1974, Folder 27 “Newscippings: ‘The Kiko Martínez Case: A Collection of Newspaper Clippings,’ 1974-1985,” Box 20 of FEM.
- 47 Brian Glick, *War at Home: Covert Action Against U.S. Activists and What We Can Do About It* (Boston: MA: South End Press, 1988), 10. Glick identifies and characterizes this method as “Psychological Warfare from the Outside.”
- 48 *The Valley Courier* (Alamosa, Colorado), October 1980 (clipping does not mention the exact date of article), Folder 27, Box 20 of FEM.
- 49 Ibid., 17 October 1980, Folder 27, Box 20 of FEM.
- 50 Ibid.
- 51 Ibid.
- 52 *The Denver Post*, 21 November 1980, Folder 27, Box 20 of FEM.
- 53 Ibid.

- 54 *Rocky Mountain News*, 21 November 1980; *The Valley Courier*, 21 November 1980, Folder 27, Box 20 of FEM.
- 55 Ibid.
- 56 *The Valley Courier*, 5 December 1980, Folder 27, Box 20 of FEM.
- 57 Ibid., 27 January 1981, Folder 27, Box 20 of FEM.
- 58 *Rocky Mountain News*, 28 January 1981; *The Valley Courier*, 28 January 1981, Folder 27, Box 20 of FEM.
- 59 *The Valley Courier*, 30 January 1981, Folder 27, Box 20 of FEM.
- 60 Ibid.
- 61 U.S. Federal District Court for the District of Colorado, photocopy of *Notice of Intent to Use Prior Similar Acts* from criminal case *United States of America v. Franke Eugenio Martinez*, Civil Action No.73-CR-414, p. 1, Box 1 of FEM. Author is not sure which folder in Box 1 contains the document.
- 62 *The Valley Courier*, 30 January 1981, Folder 27, Box 20 of FEM.
- 63 *Pueblo Chieftain & Star Journal*, 31 January 1981, Folder 27, Box 20 of FEM.
- 64 *Rocky Mountain News*, 6 February 1981, Folder 27, Box 20 of FEM.
- 65 *Pueblo Chieftain & Star Journal*, 31 January 1981, Folder 27, Box 20 of FEM.
- 66 *Rocky Mountain News*, 31 January 1981, Folder 27, Box 20 of FEM.
- 67 Ibid.
- 68 *Rocky Mountain News*, 31 January 1981, Folder 27, Box 20 of FEM.
- 69 *The Denver Post*, 31 January 1981, Folder 27, Box 20 of FEM.
- 70 Ibid.
- 71 TV news transcript, Denver TV coverage, 30 January 1981, Folder 4, Box 3 of FEM.
- 72 Ibid.
- 73 *Rocky Mountain News*, 31 January 1981, Folder 27, Box 20 of FEM.
- 74 *The Valley Courier*, date not indicated on newspaper clipping, Folder 27, Box 20 of FEM.
- 75 Ibid.
- 76 U.S. Federal District Court for the District of Colorado, photocopy of *Motion to Dismiss Remaining Counts for Judicial, Prosecutorial and General Governmental Misconduct and Prejudice from criminal case United States of America v. Franke Eugenio Martinez*, Civil Action No. 73-CR-414, p. 2, Box 1 of FEM. Author is not sure which folder in Box 1 contains the document.
- 77 Ibid.
- 78 Francisco "Kiko" Martinez, telephone interview with author, 25 August 2006 and 20 April 2007. Martinez indicated that the affidavit of U.S. Attorney of Colorado Joseph P. Dolan from the 1981 Carol Hogue case also revealed that Judge Winner allegedly placed a secret camera in the courtroom. During a follow-up interview on April 20, 2007, Martinez expressed frustration with his inability to

receive a fair trial due to Judge Winner's reputation as one who purposely obstructed justice by allowing vindictive prosecution against him in the courtroom.

79 U.S. Federal District Court for the District of Colorado, photocopy of *Motion to Dismiss Remaining Counts for Judicial, Prosecutorial and General Governmental Misconduct and Prejudice* from criminal case *United States of America v. Franke Eugenio Martinez*, Civil Action No. 73-CR-414, p. 2, Box 1 of FEM. Author is not sure which folder in Box 1 contains the document.

80 Ibid.

81 *The Denver Post*, 1 December 1981, Folder 27, Box 20 of FEM.

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