

9. THE CENTER FOR JUSTICE & ACCOUNTABILITY: HOLDING PERPETRATORS ACCOUNTABLE

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A. Introduction

Over the past year, the Center for Justice & Accountability (CJA), a human rights law organization based in San Francisco, has won several important victories on behalf of survivors of torture and other abuses in actions in U.S. federal courts against perpetrators of human rights violations. These included obtaining multi-million dollar civil judgments against perpetrators in three cases, and securing three favorable published decisions. This article describes these victories, and other CJA cases and projects.

Founded in 1998, CJA works to prevent torture and other serious human rights abuses by helping survivors hold perpetrators accountable. The principal legal mechanisms on which CJA relies are the Alien Tort Claims Act (ATCA) and the Torture Victim Protection Act (TVPA). 28 U.S.C. § 1350, and note. These laws allow U.S. federal courts to hear civil claims against persons allegedly responsible for severe human rights abuses.

The ATCA, adopted in 1789 provides jurisdiction to federal district courts over cases brought by non-citizens for torts committed in violation of “the law of nations.” Beginning with the Second Circuit Court of Appeals’ landmark decision in *Filartiga v. Pena-Irala*, 630 F.2d 876 (2nd Cir. 1980), U.S. courts have held that conduct which violates the “law of nations” under the ATCA includes human rights abuses prohibited by norms of “customary international law” -- norms on which there is

general agreement among nations, and which are definable and obligatory. Courts have recognized torture, extrajudicial killing, arbitrary detention, cruel inhuman or degrading treatment, slave labor, war crimes, crimes against humanity, and genocide, as among the violations prohibited by customary international law, and which are thus actionable under the ATCA. The TVPA, passed by Congress in 1991, affirmed the application of human rights norms in cases under the ATCA, and extended the ATCA by providing a cause of action to citizens and non-citizens alike for extrajudicial killing and torture.

B. Victories

1. Bosnian Serb Soldier Found Liable for Torture and Other Abuses with ACLU Assistance

CJA, with lead counsel Paul Hoffman and Gerry Weber of the ACLU of Georgia, won an important victory in April 2002, when Senior Judge Marvin Shoob of the United States District Court for the Northern District of Georgia issued a published decision finding Bosnian Serb soldier Nikola Vuckovic liable for torture and other abuses against four Bosniak civilians (Bosnian of Muslim Slavic ancestry) during the Serb “ethnic cleansing” campaign in 1992. The plaintiffs each were awarded \$35 million in compensatory and punitive damages. The decision, which establishes valuable precedent on a number of international law and ATCA issues, is published as *Mehinovic v. Vuckovic*, 198 F. Supp.2d 1322 (N.D. Ga. 2002).

The *Mehinovic* case arose in 1998, after plaintiff Kemal Mehinovic, a Bosniak refugee living in Salt Lake City, learned from a friend that the friend had seen defendant Vuckovic in an Atlanta suburb. Vuckovic and Mehinovic had both lived in the same town of Bosanski Samac and knew each other: Vuckovic’s wife had worked for Mehinovic in his bakery until

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April 1992, when Bosnian Serbs and Serb soldiers assaulted the town, took control over the formerly ethnically-mixed local government, and detained and tortured hundreds of Muslim men. Mr. Mehinovic and the three other plaintiffs in the case were among those victims. Vuckovic was one of a number of Bosnian Serb soldiers who severely beat Mehinovic and other Bosniak and Croat civilians held in detention camps in the town.

The victims' lawsuit alleged that Vuckovic was responsible for torture and other forms of cruel, inhuman or degrading treatment; war crimes; crimes against humanity; and genocide. Vuckovic responded to the complaint and was represented by counsel until soon before the trial. However, two weeks before the scheduled trial in October 2001, Vuckovic fired his lawyer and advised the court, through his lawyer, that he was out of the country and would not return for the trial. Judge Shoob allowed defense counsel to withdraw, but kept the trial on calendar as scheduled.

When Vuckovic failed to appear on the first day of trial, October 22, 2001, Judge Shoob struck Vuckovic's answer, and began a two-day bench trial in his absence. Each of the four plaintiffs testified about suffering brutal beatings and other abuses at the hands of Vuckovic and other Bosnian Serbs while they were being held with other Bosniaks and Croats in ad hoc detention facilities in Bosanski Samac. Some plaintiffs testified about being subjected to mock executions or games of "Russian Roulette." Others were beat with rifles and metal pipes, or kicked with boots while prone on the floor. Vuckovic subjected one of the plaintiffs to a long and particularly severe beating, during which Vuckovic forced the near-unconscious plaintiff to lick his own blood off Vuckovic's boots. During the incident, Vuckovic carved a Muslim crescent symbol on the plaintiff's forehead with a knife. Former Human Rights Watch senior researcher Diane Paul testified as an expert witness about how the abuses suffered by plaintiffs were

simply part of a systematic and widespread campaign of abuses committed by Bosnian Serbs against Bosniaks and Croats during the Balkans conflict. CJA arranged for counseling support for plaintiffs during the trial.

On April 29, 2002, Judge Shoob issued his findings and conclusions in the case, awarding each of the four plaintiffs \$10 million in compensatory damages and \$25 million in punitives. The court's decision has already been cited by several other courts, and establishes important precedent by:

- providing the first published judgment on a cause of action for crimes against humanity;
- elaborating on the elements and application of a claim for war crimes;
- recognizing a cause of action for "cruel, inhuman or degrading treatment";
- supporting use of decisions of the international criminal tribunals for Yugoslavia and Rwanda in identifying principles of customary international law;
- recognizing civil liability for persons who aid and abet human rights abuses; and
- supporting substantial damage awards against human rights abusers.

Counsel on the case included lead counsel Paul Hoffman of Schonbrun, DeSimone, Seplow, Harris & Hoffman, LLP in Santa Monica; Gerald Weber, Legal Director of the ACLU of Georgia; and Joshua Sondheimer, CJA. Research and drafting support was provided by Amanda Smith of Brobeck, Phleger & Harrison.

2. Salvadoran Generals Found Responsible for Torture

On July 23, 2002, following a four-week trial, a federal jury in West Palm Beach, Florida returned a verdict of \$54.6 million against two Salvadoran generals, living in Florida since 1989, for their responsibility for the torture of three Salvadorans in the early 1980s. The victorious plaintiffs, Juan Romagoza, Neris Gonzales and Carlos Mauricio, all now live in the United States. This case is discussed in this issue in Professor Van Schaack's article.

3. Two Published Decisions in Case Against Officer in Pinochet's "Caravan of Death"

One month after the 1973 military coup in Chile against the government of Salvador Allende, a group of military officers, operating under the orders of General Augusto Pinochet, traveled by helicopter to several cities in Northern Chile on a vaguely defined "official" mission of reviewing cases against political prisoners detained after the coup. In each town in which they stopped, a dozen or more prisoners were taken from detention in jails or garrisons, and clandestinely executed.

Armando Fernandez Larios, a first lieutenant in the Chilean army in 1973, was one of the officers who participated in this mission, now known as the "Caravan of Death." Fernandez Larios was reported to be one of the most brutal of the group. In 1999, after learning that he was living in Florida, CJA filed suit against Fernandez Larios on behalf of the mother and several siblings of Winston Cabello, a regional planning director in the Allende administration who was one among the more than 70 victims of the Caravan. The plaintiffs all reside in the United States, and three of the four are naturalized U.S. citizens.

Fernandez Larios has a notable background in the United States. He entered the U.S. in 1987 pursuant to a plea agreement with federal prosecutors, in which he confessed to aiding the perpetrators of the 1976 Washington, D.C., car-bomb assassination of former Chilean Ambassador Orlando Letelier and his American assistant Ronni Moffitt. Fernandez Larios served a brief sentence, and eventually settled in Florida, where he currently resides. In 1999, the Chilean government requested Fernandez Larios' extradition in connection with criminal proceedings against former General Pinochet. However, Fernandez Larios' plea agreement with U.S. prosecutors appears to bar his extradition to Chile. An Argentine court also has requested Fernandez Larios' extradition in connection with the assassination of former Chilean general Carlos Prats in Argentina during the 1970's. Both requests remain pending before the U.S. government.

Fernandez Larios, represented by counsel, moved to dismiss the *Cabello* case on grounds that the case was barred by the statute of limitations, that plaintiffs lacked standing, and that the court lacked of subject matter jurisdiction. In an August 2001 decision, *Estate of Cabello v. Fernandez Larios*, 157 F.Supp.2d 1345 (S.D. Fla. 2001), the court held, as a matter of first impression in the Eleventh Circuit both that the TVPA applies retroactively to conduct occurring prior to the TVPA's enactment in 1992, and that its ten-year statute of limitations could be equitably tolled. The court ruled that the concealment of Cabello's body following his death until a 1990 exhumation, and the continuation of a repressive military government until 1990, tolled the statute of limitations until that year, and that plaintiffs' claims thus were not time-barred. The court also found that crimes against humanity, extrajudicial killing, and cruel, inhuman or degrading treatment, are actionable as violations of the "law of nations," under the ATCA, and confirmed the right of Cabello's

siblings to pursue their claims for their brother's summary killing.

Following a renewed motion by defendant to dismiss the lawsuit, the court in June 2002 issued its second published decision in the case, *Cabello v. Fernandez Larios*, 205 F. Supp. 2d 1325 (S.D. Fla. 2002), again denying defendant's motion. This second decision also establishes valuable precedent:

- by providing the first detailed discussion in an ATCA case that principles of accomplice and conspiracy liability are well-established as customary international law, and thus apply in actions under the ATCA and TVPA; and
- by providing the first holding in the Eleventh Circuit that relatives of a torture victim who is subsequently killed may bring a claim under the TVPA for the victim's torture, as well as the murder;

Trial in the *Cabello* case is scheduled to begin in late May or early June 2003. Pro bono counsel on the case include Robert Kerrigan of Florida's Kerrigan, Estess, Rankin & McLeod, Leo Cunningham and Nicole Healy of Palo Alto's Wilson, Sonsini, Goodrich & Rosati, and Florida attorney Julie Ferguson.

4. Indonesian General Found Liable for Atrocities in East Timor

In 1999, the people of East Timor voted by referendum in favor of seeking independence from Indonesia. Following the vote, the Indonesian military and related militia groups unleashed a campaign of terror against East Timorese civilians that included killings, mass forced relocation, and the destruction of towns and infrastructure. In March 2000, CJA joined

with the Center for Constitutional Rights (CCR) in bringing suit on behalf of six victims of this violence against Johnny Lumintang, a Lieutenant General and Chief of Staff of the Indonesian Army. The suit alleges that Lumintang bears responsibility as a military commander for systematic abuses committed in East Timor by Indonesian troops under his control following the independence vote.

CJA and CCR served defendant Lumintang while he was visiting in the Washington, D.C. area in March 2000. Lumintang, now the Secretary General of the Indonesian Ministry of Defense, a key position in the armed forces, failed to make any appearance in the case. District Judge Gladys Kessler accordingly found Lumintang in default, and in November of last year entered a default judgment against him.

A hearing on the amount of damages was held in Washington, D.C. on March 27-29, 2001. Three of the surviving plaintiffs came from East Timor and provided emotional testimony about their ordeals, which included arbitrary detention, torture, and the extrajudicial killing of family members. Experts also testified about the widespread and systematic nature of atrocities committed by the Indonesian military and affiliated militias in East Timor, the military command structure, and the psychological impacts suffered by plaintiffs as a result of their experiences.

On September 13, 2001, the court issued its findings and conclusions, holding defendant liable for authorizing and condoning abuses against plaintiffs by troops in East Timor, and awarding plaintiffs a total of \$66 million. The court ruled that defendant Lumintang bore both direct and indirect responsibility as a commander for the abuses suffered by plaintiffs. The judge found that Lumintang had direct responsibility for "planning, ordering, and directing acts carried out by subordinates to terrorize and displace the East Timor population, to repress East Timorese who supported independence from Indonesia, and to

destroy East Timor's infrastructure following the vote for independence." He also found that Lumintang bore "command responsibility" for failing to prevent or punish abuses committed by his subordinates that he knew or should have known were occurring.

In March of 2002, defendant moved to vacate the default judgment against him, claiming that the court lacked personal and subject matter jurisdiction. A decision on defendant's motion remains pending.

Pro bono counsel on the case are Steven Schneebaum & Brian Hendrix of Patton Boggs, LLP, Washington DC; and Judith Chomsky and Anthony DiCaprio, Center for Constitutional Rights. The case is *Doe v. Lumintang*, Civ. No. 00-674 (GK) (AK).

C. New Cases

1. Torture and Disappearances in Honduras

Beginning in the late 1970s, security forces in Honduras began a campaign of abductions and disappearances against alleged political subversives. Hundreds were arrested without charge and tortured in special detention facilities. More than 150 people were disappeared after having been abducted by members of the security forces. The Inter-American Court of Human Rights and Leo Valladares, the National Commissioner for the Protection of Human Rights in Honduras, both found that the Honduran Armed Forces were responsible for this widespread campaign of political repression. The Inter-American Court found that the disappearances were "carried out in a systematic manner."

Many of these abuses have been attributed to a notorious security unit known as Battalion 3-16. According to the report of Leo Valladares titled "The Facts Speak for Themselves," the death squad engaged in a "systematic program of disappearances and political murder" in the early 1980s. The report

concludes that Battalion 3-16 was controlled at the highest levels of the Honduran military.

Juan Evangelista López Grijalba, a colonel in the Honduran army, served as the head of the National Investigations Directorate in Honduras in 1981 and as head of the Department of Intelligence for the Armed Forces General Staff in 1982. In those positions, he exercised command over members of Battalion 3-16 and other military figures who carried out torture and disappearances.

In April 2002, López Grijalba was taken into INS detention in Florida for immigration violations. The INS has asked an Immigration Judge to find López Grijalba removable based on false representations he made on immigration papers – in particular, that there were no warrants outstanding for his arrest – and based on his role alleged responsibility for human rights abuses. CJA contacted the Honduran prosecutors, who forwarded one of the original arrest warrants to CJA. The judge cited the warrant as crucial to his decision to deny bond. CJA has also been in contact with Leo Valladares and has provided INS useful information from several Honduran human rights organizations and the National Security Archives.

In July, CJA filed a civil lawsuit against López Grijalba on behalf of six Hondurans, alleging his involvement in and command responsibility for torture, disappearance and extrajudicial killing. The case, *Reyes v. Grijalba*, No. 02-22046-Civ-Lenard, was filed in Miami in the U.S. District Court for the Southern District of Florida. The complaint alleges that members of Battalion 3-16 and other figures acting in coordination with the battalion kidnapped and brutally tortured plaintiffs Oscar and Gloria Reyes in 1982; abducted, tortured and disappeared Manfredo Velásquez, the brother of plaintiff Zenaida Velásquez and father of plaintiff Hector Ricardo Velásquez, in 1981; and disappeared the brother of plaintiffs Jane Doe I and II. The complaint alleges that López Grijalba exercised

command responsibility over Battalion 3-16 and other military and security forces that carried out these abuses. Although Honduran courts have issued indictments and arrest warrants for a number of commanders implicated in the abuses of the early 1980's, none have been convicted on human rights charges.

Trial in this case is scheduled to begin between Dec. 1-14, 2003.

Pro bono counsel on the case include Robert Kerrigan of Kerrigan, Estess, Rankin & McLeod, and local counsel Stephen Rosenthal of Podhurst, Orseck, Josefsberg, Eaton, Meadow, Olin & Perwin.

2. Abuse of Falun Gong Practitioners in China

In 1999, the Chinese Government declared a ban on the practice and support of Falun Gong, a spiritual movement which has gained a broad base of support in China and internationally. The government claims that Falun Gong is an "evil cult" responsible for a variety of crimes and social ills. A crackdown by Chinese authorities against Falun Gong practitioners has been marked by severe human rights abuses: tens of thousands of practitioners have been detained, and torture of practitioners is widespread. Hundreds of Falun Gong followers have died in police custody.

In February, Beijing Mayor Liu Qi visited San Francisco en route to the Salt Lake City Olympics, and was served with a lawsuit brought by CJA on behalf of six practitioners of Falun Gong. The case, titled *Doe v. Liu Qi*, No. C02-0672 CW EC, was filed in the U.S. District Court for the Northern District of California. The suit charges Liu with responsibility for torture; cruel, inhuman or degrading treatment; arbitrary detention; crimes against humanity; and severe interference with freedom of religion or belief. The case is the first to present a claim for violations of the right to freedom of religion or belief.

Two plaintiffs, Jane Doe I and II, are Chinese citizens who were forced to flee to the United States as a result of the persecution they suffered. They both allege that they were arbitrarily detained, interrogated and tortured by Beijing police. The non-Chinese plaintiffs were detained without charge at a peaceful demonstration and beaten by the Beijing police before being deported from the country. The complaint alleges that Liu authorized the abuses suffered by the plaintiffs and that he exercised superior responsibility over the Beijing police and security forces that carried them out.

Liu Qi failed to make an appearance and CJA moved for a default judgment. The magistrate judge assigned to the case, Hon. Edward Chen, formerly a staff attorney with the ACLU of Northern California, asked for briefing on several key issues, including whether Liu is entitled to sovereign immunity and whether the act of state doctrine renders the case nonjusticiable. The State Department filed a statement of interest suggesting that the Foreign Sovereign Immunities Act (FSIA) provides immunity to sitting officials of a foreign government and that the case is nonjusticiable because it will interfere with foreign policy. CJA has responded, citing Ninth Circuit decisions holding that officials responsible for violations of customary international law act outside the scope of their authority and are not entitled to sovereign immunity under the FSIA, and that liability under the ATCA and TVPA is not limited to former officials. CJA also noted that the act of state doctrine can only be invoked for acts acknowledged as official government acts, and that China does not acknowledge abuses against Falun Gong practitioners as official policy. Further, CJA argued that the case will not disrupt foreign affairs since the State Department has been, and continues to be, openly critical of Chinese persecution of Falun Gong practitioners.

CJA expects a ruling on these issues soon.

D. Website on Universal Jurisdiction

CJA, together with Redress Trust based in London, launched the first phase of a website that is viewed by activists and lawyers alike as a key resource in sharing information needed to bring human rights abusers to justice around the world. See www.uj-info.org. The website is designed to provide resources needed to help lawyers, judicial officials, human rights advocates and survivors around the world apply “universal jurisdiction”. That doctrine of international law holds that some crimes are so universally condemned that courts anywhere may hear cases against the perpetrators (assuming the courts may exercise personal jurisdiction). The project idea was generated at a meeting of international human rights organizations, with which we continue to work in close collaboration. We are now developing a user-friendly, web-based central resource for all available information on universal jurisdiction, including legislation and cases, latest developments on advocacy and law reform initiatives, and an up-to-date directory of universal jurisdiction advocates and experts.

For further information about the above cases, including the decisions and key pleadings, please visit the website of the Center for Justice & Accountability: www.cja.org.