

**THE CENTER FOR JUSTICE &
ACCOUNTABILITY:
RECENT ACCOMPLISHMENTS
FIGHTING IMPUNITY**

By: Matt Eisenbrandt*

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. courts against perpetrators of human rights violations. These include obtaining a multi-million dollar civil judgment, enforcing a key foreign human rights judgment in the United States, freezing the assets of a perpetrator pre-judgment and garnishing the assets of another. CJA has filed one new case and expects to file two more before the year is out.

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

(2d 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.” In June 2004, the Supreme Court in *Sosa v. Alvarez-Machain*, 542 U.S. ___, 124 S.Ct. 2739 (2004), upheld the validity of the ATCA. In so doing, the court cited with approval *Filartiga* and other cases which have permitted claims for violations of “specific, universal and obligatory” norms. Which claims can go forward under the Supreme Court’s definition remains to be seen, but the list is likely to include torture, extrajudicial killing, slave labor, war crimes, crimes against humanity, and genocide. The TVPA, passed by Congress in 1991, extended the ATCA by providing a cause of action to citizens and non-citizens alike for extrajudicial killing and torture.

B. CJA’s Victories

**1. Alvaro Saravia Held Liable for
1980 Assassination of Salvadoran
Archbishop Oscar Romero**

On September 3, 2004, Judge Oliver Wanger of the Eastern District of California in Fresno issued a historic decision holding Modesto, California resident Alvaro Saravia responsible for the assassination of revered Archbishop Oscar Romero of El Salvador. In the case, *Doe v. Saravia*, Judge Wanger ordered Saravia to pay \$10 million, \$2.5 million in compensatory damages and \$7.5 million in punitive damages, to the plaintiff, a relative of the Archbishop. Judge Wanger stated that “the damages are of a magnitude that is hardly describable.” The judgment marks the first time that any individual has been

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held legally responsible for the assassination. Judge Wanger determined that the murder constitutes an extrajudicial killing under the TVPA and ATCA. Significantly, the judge also held that the assassination was a crime against humanity because it was part of a widespread and systematic attack against a civilian population.

CJA and its co-counsel, Heller Ehrman White & McAuliffe LLP, filed suit in September 2003 against Saravia for the key role he played in the assassination. Saravia was the right-hand man of reputed death squad leader Roberto D'Aubuisson, and several independent investigations had concluded that he had a primary role in organizing the assassination. The complaint alleged that Saravia obtained weapons, vehicles and other materials for the assassination, ordered his personal driver to transport the assassin to and from the chapel where Romero was shot, and paid the assassin after the assassination had been carried out. The U.N. Truth Commission and the Inter-American Commission on Human Rights both concluded, after separate investigations, that Saravia was actively involved in planning and carrying out the assassination.

Although Judge Wanger found that Saravia was properly served at his former address in Modesto, he never responded to the complaint and was not present at the hearing. Saravia is a former Captain in the Salvadoran Air Force. In 1979, Saravia left the Salvadoran military, and from that time worked closely with Roberto D'Aubuisson. D'Aubuisson, in conjunction with elements of the Salvadoran armed forces and far right Salvadoran civilians in El Salvador, Guatemala and the United States,

founded the far right political party Alianza Republicana Nacionalista ("ARENA"), which is now in power in El Salvador. D'Aubuisson organized death squads composed of civilians and military figures that systematically carried out politically-motivated assassinations and other human rights abuses in El Salvador.

Eleven witnesses testified at the hearing; some providing factual evidence about the assassination and others testifying about the importance of Romero's life and death. Those who testified about the facts of the assassination and the context in which it was carried out include:

- Amado Antonio Garay, Saravia's personal driver who, following Saravia's orders, drove the shooter to the church where the shooter killed Archbishop Romero, and who later witnessed Saravia report to Roberto D'Aubuisson regarding the assassination;
- Judge Atilio Ramirez Amaya, the judge assigned to investigate the assassination in 1980, who described his investigation, the obstruction by the Salvadoran police, and the attempt on his life which caused him to flee the country;
- Ambassador Robert White, the U.S. ambassador to El Salvador at the time of the assassination, who testified about his interactions with Archbishop Romero and the involvement of the Salvadoran military and D'Aubuisson in the assassination;
- Terry Karl, the Gildred Professor of Latin American Studies at Stanford University, who described the political and historical context in which the assassination occurred,

and provided new evidence about documents which describe the planning of the assassination.

Other witnesses testified about Archbishop Romero's life and the impact of the assassination, including:

- Bishop Thomas Gumbleton, auxiliary bishop for the Archdiocese of Detroit;
- The Reverend Canon William L. Wipfler, former Director of the Human Rights Office of the National Council of Churches;
- Maria Julia Hernandez, the founding director of the human rights office of the Archdiocese of San Salvador;
- Father Jon Cortina, a Jesuit priest and professor at the Central American University;
- Francisco Acosta Arevalo, co-founder of the Monseñor Oscar Romero University;
- Esther del Carmen Chavez Mancía, a former lay worker in the Christian base communities;
- Father Walter Guerra, a Catholic priest who worked closely with Archbishop Romero;
- Naomi Roht-Arriaza, professor at the University of California, Hastings College of the Law.

In addition to the finding on Saravia's liability, Judge Wanger's oral opinion included several other important factual findings. He stated that Roberto D'Aubuisson was the "mastermind" behind the assassination. He found that there was a "consistent and unabating regime" that "functioned as a militarily controlled government that engaged in systematic and continuous violations of human rights that were effectuated for the purposes of perpetuating the concentration of land and wealth in an oligarchy, ... stifling speech, ...

preventing the normal exercise of civil liberties, and preventing the people of El Salvador from realizing the hopes and dreams that most members of humanity enjoy in an ordered society premised on liberty and the rule of law." Judge Wanger found that those rights "were not enjoyed because of a repressive regime which utilized actively and continuously the means and methods of murder, torture, kidnapping, and other physical and psychological weapons to create a state of fear, intimidation, coercion, and repression." The court system in El Salvador was "the antithesis of due process." In holding that the assassination was carried out under color of law, the judge found that "the police forces actively and intentionally abdicated their functions of investigating and pursuing the identification of the perpetrator or perpetrators responsible for the assassination...[and] did everything in their power ... to ignore, to distort, and fabricate evidence."

Judge Wanger will soon issue a more extensive written ruling.

The trial team included lead counsel Nico van Aelstyn and Russell Cohen of Heller Ehrman, and Matt Eisenbrandt, Almudena Bernabeu and Patty Blum of CJA.

2. Haitian Colonel's Assets Frozen Pre-Judgment

In September 2004, CJA obtained an order from a Florida state court blocking the transfer of nearly \$1 million to Col. Carl Dorélien, a former member of the Haitian High Command during Haiti's brutally repressive military dictatorship from 1991 to 1994. It is the first time in an ATCA case that a defendant's assets have been frozen pre-judgment. CJA has also domesticated a

Haitian judgment and has now moved to garnish the blocked assets.

While Dorélien was living in the United States, he won over \$3 million in the Florida lottery. In January 2003, CJA filed suit in federal court in the Southern District of Florida against Dorélien for his responsibility in the notorious 1994 Raboteau massacre. After the filing of the case, Dorélien attempted to sell off his rights to annual lottery payments in exchange for a lump sum. CJA, in conjunction with co-counsel law firm Holland & Knight and solo attorney John Thornton, successfully intervened before the Florida state court hearing the lottery case and opposed the proposed deal, arguing that Dorélien's attempt to convert his yearly payments into a lump sum constituted a fraudulent transfer that sought to keep his assets out of the reach of his creditors, including CJA's clients.

CJA has now obtained an order from the state court permitting the deal to go through, but preventing Dorélien from receiving the lump sum of nearly \$1 million. Instead, the judge has ordered that the money be paid into an escrow account under the court's control. The money cannot be moved from the account without further order of the court.

Dorélien was convicted in absentia in Haiti in November 2000 for conspiracy and complicity in murder and other crimes in connection with the Raboteau massacre. In addition to his guilty conviction, Dorélien, along with his co-defendants, was ordered to pay the Raboteau victims 1 billion *gourdes*, or approximately \$28 million. CJA client Marie Jeanne Jean was a party to that judgment.

CJA has domesticated the Haitian judgment, which is now

enforceable in Florida. Based on the domesticated judgment, CJA has now moved to garnish the nearly \$1 million in the escrow account and recover the money.

Preventing Dorélien from receiving the lump sum was critical to protecting the rights of his victims. In 2003 Dorélien was deported to Haiti and detained, but in early March 2004 he and other abusers were freed during the insurgency against President Aristide. Dorélien's current whereabouts are unknown. Had he received the lump sum, he would have been able to abscond with the money leaving his victims without compensation for his crimes.

The federal court case, *Jean v. Dorélien*, is currently on appeal to the 11th Circuit Court of Appeals. In the case CJA represents Marie Jeanne and her two children, Vladimy and Michelda, as well as Lexiuste Cajuste. Michel Pierre, the husband of Marie Jeanne and the father of Vladimy and Michelda, was murdered during the Raboteau massacre. Cajuste was a prominent labor leader in Haiti who was arrested and tortured by military forces in 1993. Due to the appeal, no trial date has been set.

Attorneys on the case include Tom Bishop and Dwayne Williams of Holland & Knight, and John Thornton.

3. Assets of Salvadoran General Garnished

On July 23, 2002, following a four-week trial, a federal jury in the Southern District of Florida in West Palm Beach 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 Gonzalez and Carlos Mauricio, all now live in the United States.

In 2003, after taking the depositions of the generals, José Guillermo Garcia and Carlos Eugenio Vides Casanova, CJA and Florida attorney Dave Gorman successfully garnished \$270,000 from three accounts held by Vides Casanova.

Based on Vides Casanova's testimony, on September 10, 2004, CJA and Miami attorney John Thornton filed a motion alleging that Vides Casanova fraudulently transferred approximately \$140,000 after the filing of the suit in order to keep the money beyond the reach of the plaintiffs. The motion asks the court to hold further proceedings to examine Vides Casanova's assets and to allow the filing of a complaint that seeks to undue those transfers.

The case, *Romagoza v. Garcia*, was a landmark victory for human rights litigation. It was one of the first cases in which a jury in a fully contested trial found perpetrators liable for human rights abuses solely under the doctrine of command responsibility. The doctrine allows military commanders and other superiors to be held responsible for abuses committed by subordinates under their effective control, if the commanders knew or should have known the abuses were taking place, and failed to take all reasonable measures to prevent the abuses or punish the perpetrators.

Garcia and Vides Casanova remain in Florida. CJA has provided information from the trial to the Department of Homeland Security and encouraged their deportation.

4. Trial to Start Against Honduran Intelligence Chief and Death Squad Leader

CJA's lawsuit against former Honduran Colonel Juan Evangelista López Grijalba is set to go to trial in October 2004 in federal court in Miami. Six plaintiffs, five of whom reside in the United States, allege that López Grijalba is responsible for the torture, disappearance, and extrajudicial killing of Honduran civilians during the 1980s. López Grijalba moved to the Miami area in 1998 where he lived freely until he was arrested by immigration officials in 2002.

The case marks the first instance in which a Honduran military leader will stand trial for human rights abuses committed in the Central American nation during the 1980s. In 1981, López Grijalba was chief of the notorious DNI police force. In 1982, he became military intelligence chief for the Armed Forces. In that role, López Grijalba had control over Honduran security forces, including the infamous death squad known as Battalion 316. A report by the Honduran Human Rights Commissioner found that it is "beyond question" that Battalion 316 engaged in a "systematic program of disappearances and political murder" between 1981 and 1984. Nearly 200 civilians were disappeared by the Honduran Armed Forces during that time.

The plaintiffs in the case are Zenaida and Hector Ricardo Velásquez, the sister and son of Manfredo Velásquez, a university leader abducted and disappeared by intelligence agents under López Grijalba's direct command in 1981; Oscar and Gloria Reyes, who were abducted in a military raid in 1982 and tortured by members of the

Honduran Armed Forces under the command of López Grijalba; and relatives of Hans Madisson, a student who was abducted during the same raid and brutally murdered.

López Grijalba was ordered deported in June 2004, and he is currently being held at Krome Detention Center in Miami awaiting removal. CJA worked closely with the Department of Homeland Security in the immigration case. In finding that López Grijalba had been a persecutor, the immigration judge cited the testimony of several witnesses whose participation was facilitated by CJA. CJA has also been working with Honduran prosecutors to provide evidence for a criminal case against López Grijalba upon his return to Honduras.

The case, *Reyes v. Grijalba*, will go to trial in the Southern District of Florida. Trial counsel will include Ben Reid, Gus Bravo and Angela Puentes of the Florida firm Carlton Fields, and Matt Eisenbrandt and Almudena Bernabeu of CJA.

C. New Cases

1. **Murder and Torture by Security Forces and Death Squads in El Salvador**

On December 10, 2003, CJA filed suit in federal court in Memphis on behalf of several Salvadorans against former Salvadoran military commander Nicolas Carranza for torture, extrajudicial killing and crimes against humanity. The complaint was amended in February 2004 to add another plaintiff. Carranza, now a U.S. citizen living in Memphis, was Vice-Minister of Defense of El Salvador from 1979 to 1981. In that position, he exercised

command and control over the three units of the security forces – the National Guard, National Police and Treasury Police – responsible for widespread abuses committed against Salvadoran civilians. Despite being removed from his position as Vice-Minister due to U.S. pressure over his horrible human rights record, Carranza was later brought back in 1983 as head of the notorious Treasury Police, where he exercised command and control over the members of that group.

There are eight plaintiffs in this case, entitled *Chavez v. Carranza*. The husband of plaintiff Jane Doe I was killed in one of the most gruesome and shocking incidents carried out by the security forces during 1980, and one which led directly to the commencement of the Salvadoran civil war. Her husband was one of six of the leaders of the Frente Democrático Revolucionario (FDR), the main political coalition of pro-democracy forces in opposition to the ruling junta, who was murdered in November 1980.

Ana Patricia Chavez, Oscar Chavez and Haydee Duran are all children of Humberto & Guillermina Chavez, members of the teachers union Andes 21 de Junio, who were killed by the security forces in July 1980 in the family's home in Ahuachapan. Ana Patricia is also bringing a torture claim for being forced to witness the torture and execution of her mother.

Cecilia Santos was a student at the National University and employee of the Salvadoran Ministry of Education when she was arrested in a shopping center in San Salvador in September 1980. She was held in the National Police Headquarters for eight days and tortured repeatedly with acid and electric shocks. She fled to the U.S. in 1983.

Francisco Calderon and Jane Doe II are relatives of Paco Calderon, a school principal and leader of the Andes 21 de Junio union who was killed in the family's home in September 1980 by members of the National Police. Francisco also brings a torture claim for being forced to witness the execution of his father.

John Doe was an engineering student in San Salvador when, in 1983, he was abducted by five men dressed in civilian clothes while he was watching a soccer game on television at a friend's house. He was taken to the headquarters of the Treasury Police, where he was brutally tortured. After intervention and aid from a foreign government and a private attorney, John Doe was freed from prison and given a visa so that he and his family could flee El Salvador.

Carranza's liability in this case is based largely on the doctrine of command responsibility that was used successfully to try Carranza's contemporaries, Generals Garcia and Vides Casanova.

On September 30, 2004, Judge Jon McCalla of the Western District of Tennessee denied Carranza's motion to dismiss the case. The trial is scheduled for September 2005.

Co-counsel on the case is David Esquivel of the Tennessee law firm Bass, Berry & Sims.

2. Cases Coming Soon

CJA expects to file two new cases before the end of the year. One will involve extrajudicial killings and war crimes in an African country. The other concerns torture and crimes against humanity by a paramilitary group in the Americas.

3. Cases Under Investigation

CJA is currently investigating cases against perpetrators from Africa, Central America, the Middle East and South Asia. In addition we are working closely with authorities in other countries to pursue criminal prosecutions of human rights abusers. We will also continue to investigate the Romero case.