

Justice and the Generals

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Eugenio Vides Casanova and Jose Guillermo García

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A Viewer's Guide to JUSTICE AND THE GENERALS
PREMIERING THURSDAY, FEBRUARY 21 ON PBS

by Harold Hongju Koh

Justice and the Generals

This is a story about an unfinished search for truth and accountability. On December 2, 1980, four American churchwomen — Ita Ford, Maura Clarke, Jean Donovan and Dorothy Kazel — were found raped and murdered near San Salvador. They had come to work with the rural poor during the tragic 12-year Salvadoran civil war.

For years, their family members' search for truth was met by silence, indifference and political obfuscation. Finally, the United States Congress threatened to withhold military aid until efforts were made to find those accountable. With this incentive, El Salvador tried and convicted five low-level National Guardsmen for the churchwomen's murders. But the families

believed that in the environment of El Salvador in 1980, the guardsmen could only have committed such an outrageous crime if they had acted on higher orders. In the late 1990s, two of El Salvador's senior military leaders had retired to Florida, where the families launched a civil suit against them.

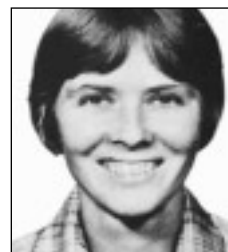
(continued inside)



Sr. Ita Ford



Sr. Maura Clarke



Sr. Dorothy Kazel



Jean Donovan

MARYKNOLL MISSION ARCHIVES

COURTESY OF THE RELIGIOUS TASK FORCE ON CENTRAL AMERICA AND MEXICO

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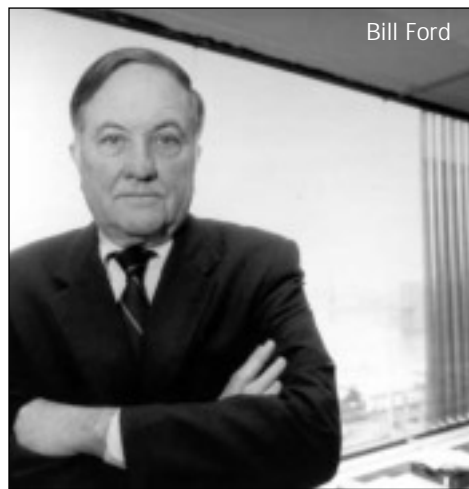
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The story of the families' lawsuit against El Salvador's former Minister of Defense Jose Guillermo Garcia and former National Guard director Eugenio Vides Casanova raises a number of important questions. What did all the years of investigation yield? Was this simply a foreign policy "show trial," an effort to rehash old grievances about Central America? Or does the case of the El Salvadoran generals fit into the line of precedent that began with the Nuremberg Tribunals and that continues with efforts to try Yugoslavia's Milosevic, Marcos of the Philippines, Chile's Pinochet, and the genocidal killers of Rwanda? In a globalized world, what is the responsibility of U.S. officials, legislators and courts to prevent gross human rights violations elsewhere in the world? What is our responsibility as Americans to monitor human rights abuses by governments that receive millions of dollars of U.S. aid, then countenance the murder of their own people and our fellow citizens?

THE CASE

What made this case possible? First and foremost, it was a brother's quest. Bill Ford, Ita's brother, committed his life to finding out who had killed his sister. Second, an American human rights non-governmental organization—New York's Lawyers Committee for Human Rights—devoted extraordinary resources to pursuing those responsible. Third, American human rights lawyers began invoking a 200-year old legal provision, the Alien Tort Claims Act—originally designed to target pirates and those who attack diplomats—to begin a series of U.S. lawsuits in the United States on behalf of foreign victims of human rights abuses. In 1991, Congress passed the Torture Victim Protection Act, which authorized U.S. victims of human rights crimes or their surviving kin to win civil damages in American courts against foreign human rights abusers who torture and kill. By century's end, numerous successful cases had been brought under these laws.

After El Salvador's peace accords, concluded in 1992, a United Nations-sponsored truth commission determined that during the civil war, government-armed forces had committed the majority of the murders, many with the knowledge or acquiescence of the top command—including Jose Guillermo Garcia and Eugenio Vides Casanova. By the mid-1990s, the two generals had retired and moved to West Palm Beach, Florida. In 1998, four of the convicted Guardsmen finally stated that higher officials had sanctioned the churchwomen's killings, but they didn't know who those officials were. Furthermore, a general amnesty in El Salvador prevented anyone from being prosecuted there for human rights crimes.



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THE LAWSUIT

In May 1999, the families of the deceased churchwomen filed suit against Garcia and Vides Casanova in a Florida federal court under the Torture Victim Protection Act and the Alien Tort Claims Act, seeking to establish ultimate responsibility for the murders. The legal argument turned on when military commanders have a legal responsibility to take action to prevent human rights abuse. The plaintiffs argued that the defendants' failure to act when they reasonably should have known of the systematic murder of political dissenters and opponents by forces under their command created an atmosphere of approval for which they should be held responsible.

At the trial, the jury heard extensive evidence that the churchwomen's mur-

der was part of a pattern and practice of human rights atrocities against civilians believed to be leftist sympathizers, that Vides Casanova had engaged in a cover-up, and that Garcia had made no serious effort to conduct a thorough investigation of the murders. In response, the generals professed innocence.

THE VERDICT

Following the three-week trial, the jurors found that the plaintiffs had not carried their burden of proving the generals legally responsible for their murders. Interviews with jurors showed that they had difficulty grappling with the Judge's instructions, which required them to find liability only if the killers acted under the generals' effective command and control. One juror reported that the plaintiffs' evidence had convinced the jury instead that a situation of chaos reigned, which deprived the generals of control over what the National Guardsmen were doing. The families of the churchwomen are appealing the decision.

THE SIGNIFICANCE

The case had far-reaching impact. For the first time the truth about El Salvador was finally examined in a U.S. court. The "real victory is that we got the story out," said Mike Donovan, Jean's brother. The trial record unearthed years of declassified documents that confirmed the findings of the United Nations Truth Commission.

Can a civilized world live with impunity as the verdict for gross human rights violators? Or do we have an obligation to pursue the truth, to turn knowledge into legal acknowledgement, to create a public record of abuse, and to declare such gross violations to be crimes against humanity? Should we let gross abusers live quietly among us, or should we treat them as enemies of all mankind? And has the churchwomen's memory been honored by the result? As Bill Ford has told reporters, "People who do these things should know that maybe not today, maybe not tomorrow, but some day somebody is going to catch up with them."

YET ANOTHER DISTURBING CASE

Romagoza et al. v. Garcia and Vides Casanova

In addition to the churchwomen's case, four Salvadorans living in the United States, Juan Romagoza Arce, Neris González, Carlos Mauricio, and Jorge Montes, also brought suit in Florida federal court against Generals Garcia and Vides Casanova. (Jorge Montes has since withdrawn from the case.) The plaintiffs charge that the Salvadoran National Guard and other military forces gruesomely tortured them. The case differs from the churchwomen's case in that the victims are alive and can present compelling testimony about what happened to them. It will also be difficult for Garcia and Vides Casanova to claim that abuses were unauthorized, given that the plaintiffs allege that their torture took place inside military posts, including, in one case, the National Guard Headquarters. This trial, originally scheduled for January 7, 2002 in West Palm Beach, has been delayed pending the federal court of appeals decision in the churchwomen's case. The trial judge will set a new trial date after the Court of Appeals issues its decision in 2002.

SUGGESTED READINGS

War Crimes Tribunals

Bass, Gary Jonathan, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton, N.J.: Princeton University Press, 2000.

Civil Litigation for International Human Rights Violations in U.S. Courts

Koh, Harold Hongju, "Transnational Public Law Litigation," 100 *Yale Law Journal* 2347 (1991).

DISCUSSION QUESTIONS

1. Does it make sense for American courts and American juries to concern themselves with the ghosts of a Central American war, seeking justice for those killed more than twenty years earlier?
2. All judgments in civil lawsuits serve several social ends: compensation of the victims; denial of safe haven to the defendant; deterrence of others who might contemplate similar conduct; and enunciation of legal rules and norms condemning conduct for which the defendants have been found liable. Which of these objectives, in your judgment, is the most important to pursue in the churchwomen's case?
3. When should a superior officer or Cabinet member be held responsible for crimes against humanity being committed by troops under his or her command? For example, under what circumstances would you believe that Secretary of State Henry Kissinger should be held responsible for actions of American troops in Vietnam, or could Defense Donald Rumsfeld be fairly considered "responsible" for any war crimes that might be committed by American forces currently in Afghanistan?
4. Bill Ford mentions that tens of thousands of civilians were killed in El Salvador while, at the same time, its government received billions of dollars in aid from the United States. The U.S. has laws prohibiting aid to countries

involved in gross violations of human rights. How does one balance what might be seen as a strategic necessity for the U.S.—supporting the government of El Salvador—with giving aid to a country that is committing such violations? Do you think the U.S. should give money to countries that are human rights violators if they're helpful in the war against terrorism?

5. Why do you think the two generals received residence and asylum in the U.S.? The UN truth commission reported that they knew about and failed to investigate the churchwomen's murders. Should our country reward that behavior with a safe haven if the responsible officers have furthered U.S. interests or if they have a close relationship to certain U.S. officials?
6. In El Salvador and other countries with histories of human rights abuse, should amnesties be given for those crimes in exchange for peace? If you believe in offering amnesty as a way of healing old wounds, do you think the trial in the U.S. is interfering with what El Salvador decided for reconciliation?

ABOUT THE AUTHOR

Harold Hongju Koh is Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School. He served as counsel for plaintiffs in numerous human rights cases, and served as Assistant Secretary of State for Democracy, Human Rights and Labor in the Clinton Administration.

The Role of Prosecutions for Past Human Rights Abuses in Promoting Society's Transitions from Dictatorship to Democracy

Koh, Harold Hongju and Ronald C. Slye, eds. *Deliberative Democracy and Human Rights*. New Haven, Conn.: Yale University Press, 1999.

History of the El Salvadoran Conflict

Popkin, Margaret, *Peace Without Justice: Obstacles to Building the Rule of Law in El Salvador*. University Park, Pa.: Penn State Press, 2000.

History and Updates about the Romagoza Case

Reports of the Center for Justice and Accountability, available at www.cja.org.

History and Updates about the Ford vs. Garcia Case

Reports of the Lawyers Committee for Human Rights on the Churchwomen's case, available at <http://www.lchr.org/lac/nuns/nuns.htm>.