

10-10-2002

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### Recommended Citation

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## Conviction in Myrna Mack Murder Trial

by LADB Staff

Category/Department: Guatemala

Published: 2002-10-10

On Oct. 3, the Tribunal Tercero de Sentencia de Guatemala, the court hearing the Myrna Mack murder trial (see NotiCen, 2002-09-02), issued its verdict. Guilty of having ordered the assassination of the anthropologist was Col. Juan Valencia. The other two defendants, Gen. Edgar Godoy Gaytan and Col. Juan Oliva were acquitted. Valencia received the maximum sentence of 30 years in prison. Myrna Mack was stabbed to death on Sept. 11, 1990.

In 1993, Sgt. Maj. Noel Jesus Beteta was convicted of the crime and sentenced to 25 years; he remains in prison. Valencia was chief of the Department of Security of the Estado Mayor Presidencial (EMP), the presidential guard, at the time of the killing. The court found that it was he who gave Beteta the direct order to kill Mack. The three-member court presided by Noelia Rios found that there was no convincing proof against Gen. Godoy, who was chief of the EMP at the time, or Oliva, who was second in command in the Department of Security.

Judge Rudy Chin explained that neither the Public Ministry nor the accusing party, Helen Mack, sister of the victim, could demonstrate the participation of either of the officers. The court rejected the prosecution's assertion of guilt by chain-of-command. With no further charges pending, these two were free to leave the huge courtroom at the Corte Supremo de Justicia (CSJ).

The decision to convict Valencia turned on testimony and evidence presented by a single witness, Jorge Lemus Alvarado. Lemus had been a convict at Pavoncito, the prison to which Noel Beteta was remanded following his 1993 conviction. The enterprising minor drug dealer befriended the sergeant, and over time convinced him that the army had abandoned him. If Beteta had any hope of salvation, it lay with admitting to Lemus that he had murdered Myrna Mack and giving up the officers who had ordered him to do it. Had that been the extent of Lemus' labors, this trial would probably not have taken place, there being nothing more than the hearsay utterances of a convicted felon to present to a court. But Lemus had the foresight, and the means, to preserve for the historical record, both on audiocassettes and on videotape, the confessions of the only witness to the complicity of Col. Juan Valencia. In obtaining that confession, Lemus had done what no prosecutor and no judge had been able to do, and he had documented the accomplishment.

Moreover, he guarded those tapes for years, until the time was right to release them. Lemus could easily have released the tapes much sooner. He had promised to give them to a trio of international reporters at the time. But he never gave the tapes to the press. If he had, there might have been a journalistic coup, but it would have been unlikely to result in a conviction, given the ineffectual criminal justice system in the early 1990s. The military was sufficiently powerful to bury the matter, or to have tried the defendants in a military court and exonerated them.

In December 1993, while still in jail, Lemus contacted the UN Human Rights Relator for Guatemala, Monica Pinto, with his story. Pinto, who was in Guatemala in her official capacity at the time, told

the press that the "declarations are very serious and should be investigated by the competent authorities." It would be nine years before any such investigation would result in judicial action.

### *Not your average prisoner*

Explaining the motivation for his actions in a 1995 interview, Lemus said he was the son of a former Guatemalan economy minister who was murdered by military intelligence agents. While his father was a member of the Guatemalan UN delegation, Lemus attended the Marvell Academy for Boys in Rye, New York, and graduated from Columbia University in 1972. The court found Valencia guilty by a two to one margin, citing the evidence on the tapes as decisive. Absolution of the two other defendants was based on the absence of any direct imputation of guilt on the tapes. The majority made this finding even though Beteta, who testified at the trial, claimed to have been on drugs when he made the recordings.

The one dissenting judge, Rudy Chin, was thought by the prosecution to be a problem from the outset. Chin had recused himself from another high-profile case involving military officers in February 2001. This verdict, however, does not signal an end to litigation about the murder.

The Organization of American States (OAS) Inter-American Court of Human Rights (IACHR) in San Jose, Costa Rica, will try a case against the state of Guatemala for denial of justice to the Mack family. Attorney for the Mack family Robert Varenik explained that the state is accused of violating the right to life and four other infractions of the American Convention on Human Rights. "What we have always asked has been that all measures necessary to clarify this case be assumed by the Guatemalan state." He said that the verdict in the present case would be useful in the Inter-American Court case "because now it will be very difficult to avoid coming to that conclusion." The state did not comply with its duty to "give effective and swift juridical remedies" to the victims of crimes against human rights. "We can't say that after twelve years, justice has been swift," said Varenik.

The case was first brought to the OAS Inter-American Commission on Human Rights in Washington, DC, and was referred to the Inter-American Court just last year. Helen Mack, sister of Myrna, who has been working to bring this crime to trial from the beginning, also spoke of the broader implications of the verdict. "The tribunal, upon giving probative value to the historical context, put in question the policy of terror of the Guatemalan Army under the so-called Doctrine of National Security imposed by the United States during the Cold War," she said. Helen Mack also told the press that she believed that the judgment also strikes at the impunity of the intelligence system. In reaching its decision, it gave probatory value to the report of the Commission of Historic Clarification, published in 1999, which the state has rejected.

The report, entitled Guatemala, Memory of Silence, investigated the war's violence and documented more than 42,000 victims of violations of human rights for which the army was, in the majority of cases, responsible. "This initiates a new phase, in which the report could be used as a catalyst of new cases," said Helen Mack. But there is an ironic twist to this case, one that could hold some hope for Valencia. The trial from which Judge Chin recused himself in 2001 found three military officers and a priest guilty of the April 26, 1998, assassination of Bishop Juan Gerardi, (see NotiCen, 2001-06-14),

the person who presided over the making of Guatemala, Memory of Silence and the person who released the report to the public.

Col. Byron Lima Estrada, his son Capt. Byron Lima Oliva, and Sgt. Obdulio Villanueva each received the maximum sentence of 30 years. The priest, Mario Orantes, got 20 years. On Oct. 8, the Sala Cuarta de Apelaciones overturned those sentences. They ordered a new trial in which the original judges could not participate.

-- End --