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## Jennifer Harbury Loses Supreme Court Case

by LADB Staff

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The US Supreme Court has rejected human rights lawyer Jennifer Harbury's suit against officials of former President Bill Clinton's administration whom she accuses of misleading her about the fate of her late husband, Efraim Bamaca Velasquez, a Guatemalan guerrilla who was tortured and killed by the Guatemalan military.

Since Bamaca's disappearance, Harbury has claimed that former Secretary of State Warren Christopher and other Clinton administration officials misled her and withheld information about her husband's capture. Harbury claims the US government was complicit in the death of her husband, that US officials knew Bamaca was captured alive and tortured by the Guatemalan army, and that US officials may have hoped to benefit from some of the information Bamaca could provide under torture.

In captivity, Bamaca, a rebel commander of the Organizacion del Pueblo en Armas (ORPA), was reportedly chained naked to a bed, repeatedly beaten, and encased in a full-body cast to prevent his escape. Harbury had met Bamaca in 1990 when she went to the department of San Marcos to do research on a book on the Guatemalan guerrilla movement. The two married a year later (see NotiSur, 1994-11-04).

After her husband's disappearance in March 1992, Harbury thought that he had been killed. However, a member of Bamaca's unit who escaped from the Santa Ana Berlin military base in Coatepeque, Quetzaltenango, in late 1992 informed her that Bamaca was being held there in a secret military prison (see NotiSur, 1994-11-04). Guatemalan state authorities denied this claim, saying that Bamaca had killed himself to avoid being captured in battle.

In October 1994, Harbury embarked upon a month-long hunger strike in front of the National Palace in Guatemala City, demanding that the Guatemalan government inform her of Bamaca's whereabouts (see NotiSur, 1994-12-02). Another hunger strike by Harbury in front of the White House in March 1995 is believed to have contributed to a temporary suspension of US military aid to Guatemala that year (see NotiSur, 1995-03-17). At the end of March 1995, Rep. Robert Torricelli (D-NJ) who is now a senator released classified information indicating that Bamaca was killed on orders from a Guatemalan army officer who was a paid informant of the Central Intelligence Agency (CIA). Torricelli called for a Justice Department investigation into the CIA's role in the deaths of Bamaca and Michael Devine, an American innkeeper who was murdered by Guatemalan soldiers.

Torricelli accused the CIA of withholding evidence about the killings and said that all US government employees who knew about them should be fired (see NotiSur, 1995-03-31). Clinton administration deceived Harbury, withheld information. Later, Harbury learned that the US government had withheld information about her husband's capture and death.

A State Department document that Harbury acquired under the Freedom of Information Act (FOIA) revealed that the US Embassy in Guatemala learned in September 1993 that Bamaca had not been killed in combat but had been interrogated, tortured, and murdered while in army custody (NotiSur, 1995-07-14). A declassified CIA document from March 1992 revealed that the CIA had been aware of Bamaca's captivity from the beginning. After learning of her husband's death, Harbury sued the Guatemalan government in the Inter-American Court of Human Rights (IACHR).

In December 2000, the IACHR ruled that the Guatemalan military was guilty of the disappearance, torture, and extrajudicial execution of Bamaca. The court also ruled that the military was guilty of obstruction of justice (see NotiCen, 2000-12-21). Harbury also filed suits against the US government and the CIA in the US Federal Court for involvement in her husband's death (see EcoCentral, 1998-07-23). A federal judge threw out most of her claims, but an Appeals Court allowed her to pursue the claim that Warren Christopher and others lied to her to protect themselves from a lawsuit. Harbury contends that the lies of government officials, specifically that her husband was dead when he was being held secretly by Guatemalans working with the CIA, prevented her from seeking help from a US judge to save his life.

### *US government officials claim right to lie*

Attorneys representing Christopher and other former US officials argue that the Constitution should not be interpreted to allow citizens a right to a truthful response to informal inquiries of government. President George W. Bush's administration has supported this position. Solicitor General Theodore B. Olson recently wrote, "The right of access to the courts does not include a right to force government officials to disclose all information available to them, even when that information might preserve litigation options." Olson points to situations in which government officials might have a legitimate need to give false information.

However, Harbury argues that the case has nothing to do with national security. "This is about whether officials can lie when someone they are not at war with and who presents no national security threat is being tortured," she said. Harbury also contends that, instead of issuing misinformation, the US government could have answered "no comment" to her inquiries. Olson's retort is that this would unduly restrict the government's ability to withhold information and to lie. "The perhaps unfortunate reality is that the issuance of incomplete information and even misinformation by government may sometimes be perceived as necessary to protect vital interests."

In the end, the Supreme Court rejected Harbury's case not on national security grounds but rather on technical grounds that her claim was not adequately pleaded in the original complaint. The original complaint was ruled deficient for not having set forth exactly what legal claims she would have brought to save her husband's life had she known that he was alive and in captivity.

However, Harbury does not see the court decision as a total loss. She points out that the court did not accept the US government's main claim that "federal officials must have the right to lie outright to the American public." She is pleased that the court did not authorize or validate "the withholding of crucial information that could save the life of a secret prisoner suffering torture at the hands of CIA-paid operatives."

Only Justice Clarence Thomas voiced support for the government's argument. Thomas, who submitted a separate opinion, agreed with the majority opinion, but went further than his colleagues in arguing that the government did not have the obligation to "disclose matters concerning national security or...provide information in response to informal requests." Harbury notes that her claim of intentional infliction of emotional distress is still alive and well in the US District Court and that she will return to the lower court to "fully pursue this and other claims which are still pending there, including a number of tort claims as well as claims based on international law."

-- End --