

Profile

THE CENTER FOR JUSTICE AND
ACCOUNTABILITY

Gerald Gray

The Center for Justice and Accountability (CJA) deals with the issue of redress for victims of human rights violations, and therefore also with the issue of denying impunity to those who have violated victims' rights. Victims have a moral and legal right to redress, the denial of which perpetuates not only moral and legal outrage but also serious emotional problems—both for individual victims and for the body politic where the victims or the perpetrators live. The clearest example of this principle may be seen in the attempts, both active and passive, of perpetrators and those complicit with them to encourage the world to “forget” genocide, mass torture, or other atrocities. When governments in Chile, Argentina, or Cambodia argue that what has happened in their countries should be forgotten in the name of civic peace, or when banks and art museums make no attempt to ascertain the original ownership of property that may have been looted during World War II, it is profoundly distressing to survivors—for whom forgetting is an emotional impossibility. Victims of Japanese medical experiments or sexual enslavement during World War II are now revealing the devastation they have lived with all their lives. Holocaust survivors and their descendants remain profoundly aggrieved that Swiss banks con-

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tinue to withhold their insurance policies and savings. The lack of a just legal procedure to bring closure to the issues of human rights violations means that Argentines and Chileans are endlessly forced to review what happened during their dictatorships. Within the United States, the descendants of Native Americans and slaves continue to demand justice for having inherited the terrible conditions that flowed from colonial impoverishment and slavery. The CJA was founded to encourage the world to remember atrocities such as these and to see that victims are given the opportunity for redress.

Mental Health and Human Rights

Without justice, bodies politic become bitterly and unendingly divided. Perpetrators and their supporters are afraid of being subjected to actions taken in revenge (a real possibility if this is the only type of “justice” available to victims), a fantasy whose hold might be weakened if a fair system of justice existed. Victims are likely to remain enraged, depressed, fearful, despairing, and untrusting of others in the absence of a genuine attempt to acknowledge their history, to compensate and restore them, or to provide protection from and punishment to aggressors.

The CJA was founded because of an encounter I had with one such victim. In 1995 I was working as a psychotherapist in a center for treatment of survivors of political torture. A man referred himself for psychotherapy after having been in my city only two weeks. He was a survivor of torture and incarceration in a concentration camp in his country and had just been released. When he arrived in the U.S. he was shown photos of groups of his fellow exiles, and in one of the photos was the face of the man who had tortured him—a man of the same ethnicity who had gone over to the aggressors, a man he had known as a neighbor. I feared that my patient would hunt down his torturer and kill him. All his symptoms were acute: rage, fear, paranoia, sleep disturbance, increased startle response, and so on. Wanting to research his legal alternatives, I convinced him not to act until I could see him once more, but at the next appointment, the translator told me the man had fled the area and gone several thousand miles away. There was neither treatment nor justice there, far from

clinicians trained to deal with torture or anyone with knowledge of how to use the law. My subsequent inquiries revealed to me that virtually all major refugee and immigrant groups in the U.S. face a similar problem—the presence of their aggressors in the U.S. These groups have not attempted to use the legal system themselves, nor have they revealed such problems to U.S. human rights organizations because they have not trusted us with their security issues, because they have not known that there are U.S. laws specifically designed to help them, and because they have thought that any help would be prohibitively expensive. The Center was founded to help relieve these problems.

Description of the CJA

The CJA is an independent nonprofit corporation initiated by Amnesty International–USA on behalf of its anti-impunity goals. Significant support in the first year also has come from the UN Voluntary Fund for Victims of Torture. The agency opened its doors in January of 1998.

In working on behalf of Amnesty's anti-impunity goals, the agency uses the law, education, and a clinical support system for victims. A significant part of the work is to see that individuals who have violated human rights in their own countries and then come to the United States are located and brought to justice. (My own estimates, extrapolating from clinical literature on torture, suggest that several thousand violators have arrived in the U.S. since the end of the Vietnam War.)

In doing its work, the CJA cooperates with the International War Crimes Tribunal in the Hague, maintains a working relationship with the U.S. Department of Justice, and works with torture treatment centers throughout the United States so that victims who wish it can be adequately referred for medical, psychological, and social service assistance. On behalf of victims both in the U.S. and abroad, the CJA also seeks redress using the U.S. legal system to bring civil lawsuits. In addition to potential monetary compensation, such lawsuits also afford a form of redress particularly valued by many survivors of human rights violations: the possibility of finally confronting their abusers and of obtaining information on who commanded the abuses, who carried them out, for what purpose, and where to find the disappeared.

How the CJA Functions

Education plays a primary role in the work of the Center, because refugee and immigrant communities generally are unaware of the existence or nature of applicable laws that can provide an avenue of redress, nor do they know where to turn for legal assistance or how such assistance can be paid for. The CJA offers its services free, but since it cannot possibly do all the needed legal work itself, it also depends on the charitable (pro bono) assistance of private lawyers. The pro bono lawyers must be educated about applicable laws as well as the unique and sensitive challenge of working with these clients. The agency also provides information to the public both through the media attention our case work receives and through legal steps, such as our public statement requesting the U.S. government's cooperation in releasing relevant documents to the Spanish courts in the Pinochet case. The recent international interest in the Pinochet case is a clear example of education and media attention helping to sensitize the general public to the presence of human rights violators, the question of impunity for crimes against humanity, and the questions of law and politics surrounding them. Such public awareness is crucial to the ongoing success of this work.

Within the U.S., civil suits in these types of human rights cases may be brought either under the Alien Tort Claims Act (ATCA) or the Torture Victim Protection Act (TVPA). Although enacted in 1789, the ATCA was seldom used until recently. It grants aliens the right to bring civil suit in U.S. federal courts for violations of international law committed in any country by other individuals. The TVPA, enacted in 1992, permits civil lawsuits by individuals, either U.S. citizens or aliens, against individuals acting for foreign governments or under color of law in cases of torture or extrajudicial killing. Under both acts, there is a requirement that the defendant(s) live in the U.S. or be visiting it in order to be served. The Center's first case was filed in August 1998 using both acts on behalf of Bosnian individuals in the U.S. and Europe against a former Serb soldier residing in Atlanta, Georgia.

Practical Problems in the Center's Approach

There are often difficulties in achieving the objectives of these civil suits. First, even if a suit is filed and a judgment is

made, it can be quite difficult to collect damages; usually the defendants flee when they lose. Second, individuals who could file suit are frequently afraid to reveal their identities, as may be necessary in a civil suit, for fear of repercussions against them or their families, both in the U.S. and in their home country. Very often we have found that victims know very well where perpetrators are but will simply refuse to come forward in a public forum. For instance, we know of one refugee community that is aware of the location and current criminal activity of eleven torturers presently residing in the U.S. but is consciously waiting to see if government use of criminal law changes in such a way as to make it possible for them to report to authorities safely—a point discussed below.

To address the problem of collecting damages once a suit has been won, the CJA uses private investigators to explore if and where defendants have assets. While it is true that collecting damages may be difficult because defendants often flee once a judgment has been made against them, it is not an insignificant sacrifice for them to have to leave potentially comfortable lives in order to keep savings or prevent wages from being garnished. U.S. courts generally have not found a way to freeze assets before a civil suit is under way except in the case of Ferdinand Marcos, former president of the Philippines, so the flight of defendants in such cases has been successful. Sufficient safety for plaintiff-victims will only be guaranteed when, in addition to civil suits, the government begins to bring criminal suits against violators of human rights and then to imprison those found guilty for a sufficient time to prevent them from acting in revenge. Victims often fear deportation of their violators as a first option because it would return them to the homeland where victims' families may remain. Since felony convictions in such cases require the government to deport on completion of sentence, victims are unlikely to press charges even in criminal suits unless they are confident that convictions would carry long jail terms—as they could if cases were brought under the Torture Convention, because the prosecution for torture would ensure application of commensurate U.S. penalties. If such criminal suits are filed under the Torture Convention, many more victims can be expected to reveal the presence of human rights violators. This outcome would be helpful to them but would

also promote the safety of all U.S. residents, since many violators are connected to the drug trade, protection rackets, illegal arms sales, and/or other violent and criminal activity.

In the past, federal prosecutors have usually filed charges against the perpetrators of these types of violation for fraud, charging them with having lied on their application for admission to the U.S., either by swearing they had not committed crimes against humanity or by using false documents. Even if these types of charges are successfully brought, the result is often only a few years' imprisonment followed by deportation. The CJA urges a different course: the U.S. has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Forms of Punishment; thus, the filing of charges under Article 5 could even allow life imprisonment.¹ Such action would not only protect the victims and U.S. residents; our hope is that, by making the position and approach of the U.S. widely known, it might discourage perpetrators from coming to the U.S. or even prevent potential perpetrators from violating human rights abroad. It would certainly give victims a more complete sense of justice and hope in human relations.

Some final remarks need to be made on health issues, beginning with the struggle with retraumatization that victims may go through in seeking justice. Those outside the specialty of trauma treatment are generally not aware of a fact well known to victims: that exposure to stimuli related to or suggesting the original trauma will induce and/or increase symptoms of post-traumatic stress disorder (PTSD). Even the remembering required to do psychotherapy in a safe room induces retraumatization. Thus the presence in the courtroom of lawyers performing hostile cross-examinations and armed and uniformed personnel—and of the victim's torturer, guard, or kidnapper—may be expected to cause flashbacks, dissociation, paranoia, sleep disturbance, and any number of possible PTSD symptoms. These symptoms, in addition to others such as major depression that can follow from their traumas, put the victim willing to come forward to seek justice at grave risk. For this reason, and also because Center staff quite often discover both medical and psychological problems in victims that have gone untreated for years, the CJA maintains close working relationships with torture treatment centers.

Hope for the Future

Clinical literature in torture treatment is replete with examples demonstrating that the point of modern torture is not so much to gain information, to convert, or to punish as it is to break trust. If political authorities break people's trust in one another, they can prevent people organizing to change the structures of authority. Certainly the victim's trust is often broken, but so is the trust of the community. Any steps toward restoring trust are therapeutic. This is why torture treatment centers often do more social casework than psychotherapy. While the CJA arranges clinical attention for people who seek out its legal services, perhaps its greatest contribution to the health of its clients is in the area of restoration of trust, because the last thing such victims have expected to see is justice. And with the restoration of trust comes the chance for reintegration into the world of humans—with family, friends, workmates, church and party, and all else. In health and in law, this is the charge of our mission.

References

1. Article 5 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (G.A. Res. 39/45, UN GAOR, 39th Sess., Supp. No. 51, at 197, UN Doc. A/39/51 [1985]) reads as follows:
 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
 2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.
 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.