



# Breaking Silence

The Case  
That Changed  
the Face of  
Human Rights

Richard Alan White

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ADVANCING HUMAN RIGHTS

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*Breaking Silence: The Case That Changed the Face of Human Rights*

Richard Alan White

*For All Peoples and All Nations: The Ecumenical Church and Human Rights*

John S. Nurser





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**The Case That Changed the  
Face of Human Rights**

RICHARD ALAN WHITE

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Joelito was only one who died of torture that day. One among hundreds every day, all around the world. But they go unnoticed, forgotten, without any testimony. It is as if their suffering and deaths never happened.

—DR. JOEL FILÁRTIGA

*Breaking Silence* is dedicated to those whose deaths did happen—and continue to happen.

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# FOREWORD

THIS REMARKABLE BOOK gives readers a unique look into the most celebrated legal case in the international human rights field. Ironically, in 2004, at the very time this book is being published, the Justice Department of President George W. Bush is challenging that decision.

The story, which resulted in the *Filártiga v. Peña* case, involved the death of a young man, Joelito Filártiga, who was tortured and killed by an agent of Paraguayan dictator Alfredo Stroessner in 1976. Joelito's sister, Dolly, came to the United States and was advised that she could sue the murderer of her brother under an ancient but newly rejuvenated statute that might give her damages in a civil lawsuit against the alleged murderer, Mr. Américo Peña-Irala, who had moved to the United States. The statute, called the Alien Tort Claims Act (ATCA), was issued by the very first Congress in 1789.

Federal judge Eugene Nickerson, to whom Dolly and her father, Dr. Joel Filártiga—who joined the suit filed by the Center for Constitutional Rights (CCR)—presented the case, declined to extend jurisdiction in the civil suit. In his view, the long-neglected ATCA statute did not confer jurisdiction on a foreign national for a tort committed in Paraguay. In the legal community, that result was not unexpected.

But the CCR lawyers' appeal to the Second Circuit Court was sensationally successful. The Appellate Court reversed the trial judge and remanded the Filártigas' case to the District Court for a hearing. The trial resulted in a decree that ordered the defendant to pay \$10.375 million to the Filártigas in compensatory and punitive damages.

In short, the Appellate Court judges who wrote the 1980 reversal found that Joelito had been tortured and killed by a public official, and that such conduct clearly violated the customary norms of international law. In part, they relied upon Article 5 of the Universal Declaration of Human Rights, which proclaims that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The Filártiga family's success has inspired some seventy progeny cases. Throughout the 1980s, these cases expanded the scope of the *Filártiga* interpretation of ATCA to include not only torture but also “disappearances,” extrajudicial executions, crimes against humanity, and genocide. Initially, these decisions were brought against government officials in countries such as Argentina, Chile, El Salvador, the Philippines, and the former Yugoslavia.

Beginning in the mid-1990s, a second wave of *Filártiga* progeny cases moved beyond individual human rights violators to class-action suits against corporations.

Today, there are dozens of pending class-action suits against corporate defendants ranging from oil conglomerates destroying the Amazon rain forest to designer clothing companies exploiting workers' rights in their developing-world sweat shops.

In response to complaints by some U.S. corporations, the U.S. Justice Department under President George W. Bush is attempting to reverse the *Filártiga* precedent. It argues that ATCA is a statute that furnishes only jurisdiction and not a cause of action. In effect, it claims that whereas the law does allow the courts to accept ATCA cases, it would require a separate act by Congress expressly to give people the right to actually file the suit. This new position reverses the position of the Justice Department under the Jimmy Carter administration. At that time, the Department of Justice intervened on behalf of the *Filártigas*, contending strongly that the human rights standards invoked by the victims' position reflected the view of President Carter. He said that the supremacy of human rights was the soul of his foreign policy.

Even after the Supreme Court pronounces on this issue, the legal question will not be resolved. In anticipation that limitations may be placed on ATCA, in 1992 Congress passed the Torture Victim Protection Act (TVPA), which, on the basis of the *Filártiga v. Peña* decision, allows U.S. citizens as well as aliens to sue for torture and summary executions committed in a foreign country. If the Supreme Court restricts the remedy of ATCA, it is not clear whether this would also apply to TVPA. Moreover, should it become necessary, defenders of ATCA intend to sponsor congressional legislation that will accord ATCA the necessary cause-of-action provision.

According to some diplomats, the holding in *Filártiga*—that aliens in the United States can reach the assets of individuals in other nations—is an infringement by the courts upon the constitutional right of the executive branch to conduct foreign relations. Some commentators also affirm that various U.S. corporations are being unjustly charged with violations of international law in Burma, Colombia, Nigeria, and elsewhere.

A few leaders and jurists in foreign countries are protesting the reach of a statute that was passed by the very first Congress of a new nation devoted to the pursuit of justice, arguing that it is surely anomalous that lawyers seldom used ATCA for some 190 years. But that statute made the United States a defender of international law, and it established that ours is a country that guarantees indemnification of aliens for wrongs done to them, when those wrongs are not remedied where they took place and when those wrongs are violations of the international law that is applicable to every human being on the planet.

Regardless of the ultimate decision of the courts on ATCA, the *Filártiga* case will still be a monument to a new interpretation of international law with profound significance for the jurisprudence of federal courts in America.



This inspiring narrative by historian Richard Alan White provides a wealth of new information about the *Filártiga* case and the inner workings of the human rights community—as well as the U.S. government. The author knew the murdered Joelito and

continues his close personal friendship with the Filártiga family. He put himself at great risk by remaining in Paraguay and working with the Filártigas as they decided to break the silence of a painfully oppressive society.

White's meticulous research is combined with a journalistic sensibility. He offers a stunning account of the horrific murder scene in Paraguay, then the longest reigning dictatorship in Latin America, and he describes in detail how the human rights community—from members of the Carter administration to professional advocates—rallied to seek justice for the Filártigas.

As a member of Congress, I voted in 1976 for the passage of the Foreign Sovereign Immunities Act. I thought then that it was a measured and carefully crafted law by the U.S. State Department that spelled out the limitations on the powers of all sovereign nations. I am not certain that I would vote for it now, however. The world has changed. Some claim that the concept of national sovereignty needs to be reexamined, and that the United States should be a leader in developing laws that will punish violations of international law even when they are committed against a noncitizen of the United States. ATCA and TVPA are designed to accomplish that objective.

It is fair to say that the *Filártiga* case changed history. We owe Richard Alan White an enormous debt of gratitude for his courage, his research, his perseverance, and his willingness to tell this story—a story that shows, unflinchingly, that human rights matter.

ROBERT F. DRINAN, S.J.