



February 27, 2013: Third and Final Day of Testimony in the Removal Hearing of General Jose Guillermo Garcia before Immigration Judge Michael Horn in Miami, FL

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Inside a usually unassuming federal building in Miami Florida, fireworks crackled in the fourth floor immigration court as Immigration Judge Michael Horn subjected General Jose Guillermo Garcia to intense interrogation. General Garcia's attorney requested permission to recall her client to the stand, taking Judge Horn, the DHS lawyers and the audience by surprise. After a colloquy regarding the scope of the potential testimony and an unsolicited statement by General Garcia saying he had nothing to add, his lawyer backed down from her request. However, Judge Horn then announced he had some questions for General Garcia. And so it began.

Judge Horn pressed General Garcia repeatedly on his knowledge of widespread human rights abuses, including torture and extra-judicial killing, occurring during his tenure as Minister of Defense of El Salvador from 1979-1983. In response, Garcia continually acknowledged that he knew of the abuses. When Garcia conceded he knew torture was being carried out by the military, Judge Horn pushed him, "How could you let it occur?" Horn stated that he wanted to believe General Garcia's protestation that he was part of the solution, but the record in the case was "replete" with instances of massacres of civilians, gross human rights violations, and the taking of lives. Garcia protested that "In all ways, I lacked control." Judge Horn again pressed, "Are you saying you failed in your responsibilities as Minister of Defense?" General Garcia then made a startling admission: yes, he did bear responsibility for these abuses although he declaimed that he bore no "culpability."

Judge Horn continued, "It was your responsibility to have control. Why didn't you?" Judge Horn recounted testimony that General Garcia was number one in his military academy graduating class (*tanda* of 1956), he was a respected leader, he had resources, not only from his own government but also from the U.S. All levels of the U.S. government, including the President of the United States (alluding to the declassified telegram concerning President Reagan's call with the Salvadoran President in April 1983 after the Las Hojas massacre), Horn noted, urged Garcia to bring the military under control.

Judge Horn confronted Garcia, "How can it be that after all the evidence that the Department [of Homeland Security] has presented that atrocities existed, that they were widespread and numerous, that you were the Minister of Defense during this period, that these abuses went almost unabated, and given the type of individual you are, how could you let this happen?" When Garcia attempted to deflect the problem onto internal divisions within the military and his inability to obtain "appropriate responses from his subordinates," Judge Horn again demanded an explanation. Judge Horn stated, "The Court finds that the Minister of Defense is responsible for making sure those conflicts don't exist. What concerns this court is that this situation continued for some time, and it appears that you failed in your responsibilities. You didn't do what needed to be done for a law-abiding military to serve its country and its people." Judge Horn bluntly asked, "If you felt you couldn't do your job, why didn't you resign? Why did you let it go on, knowing of the atrocities against the civilian population by the military?" Yet again, Garcia declared that he knew of the atrocities, that they were "public information."

Judge Horn reminded General Garcia of the value of each human life lost during his tenure as Minister of Defense, and the taking of one innocent life was one too many. Judge Horn demanded an explanation from Garcia. When Garcia said he attempted to resign three times, but his resignations were not "accepted," Judge Horn shot back, "Don't give me formalities. You were a strong man. You did

what you wanted to do. ... If you wanted to walk away, you needed no one's permission to do so." Judge Horn stressed that the issues he was raising were those he would be grappling with in his decision – not just for the case of General Garcia but for the law of the U.S. as well.

When Judge Horn asked Garcia if, with the wisdom of the passage of time and advanced age, had he reflected on his position as Minister of Defense and would he do anything differently, Garcia reflexively relied on time-worn excuses: he had no control and the guerrillas were carrying out the abuses. Judge Horn once again confronted Garcia, "Are you telling the court you had no responsibility?" Garcia again made the startling concession, "I cannot evade responsibility in my position, but I consider that different from culpability." Judge Horn reminded him – "This court will make that decision."

Loren Coy, DHS attorney, questioned Garcia closely on the events surrounding the massacre at El Mozote. At first, Garcia tried to reduce the number of victims to 200, relying ostensibly on the Truth Commission (TC) report (The TC report did not have the benefit of the extensive forensic excavation of the site which occurred years later). Coy pressed Garcia on his terming the massacre a *novela* (a fiction); Garcia said he did not remember. When Coy asked, "Are you now saying the massacre didn't happen?" Garcia said that he had been out of the country at the time of the massacre and did not receive any information about it. Garcia then counter-posed the killing of twenty soldiers and a bombing attempt on his own life as an answer to why he never denounced or investigated the massacre of close to one thousand men, women and children. Under Coy's artful questioning, Garcia conceded that he did have the means to investigate the massacre. Finally, in turning to the massacre at El Calabozo in August 1982, Coy enquired if Garcia had ever ordered an investigation of that massacre. After referring Garcia to the Truth Commission's interview of him and their findings that no investigation had occurred, Garcia conceded that he had read the report.

Garcia's lawyer elicited further testimony about El Mozote. Garcia's response was a surprising one. He stated that the crime had been carried out by the Atlacatl Battalion which had been trained by the U.S. in "regular warfare," and "we were in irregular warfare." He claimed that this created serious problems for him with those battalions and with the head of the U.S. military group. The full meaning of that story was left untold.

Earlier in the morning, Garcia's daughter, Ana Carolina Montoya, testified. Her family moved her to the U.S. to go to school when her father became Minister of Defense, and she came back to El Salvador only on holidays. Relevant testimony included the fact that her father had a "red phone" in the residence which rang constantly with updates and information. She also said she regularly saw her father appear on television. Under cross examination, Ms. Montoya described her father's military position as one where he "had to be in charge. His position demanded that of him." She reiterated that her father had regular access to official information. The hearing was interrupted at one point by the presence of a man who burst into the room and shouted in Spanish about his anger at the Salvadoran guerrillas and that he had come to court to show his support for Garcia. The judge stopped proceedings momentarily to silence the man and tell him to take a seat.

At the close of proceedings, Judge Horn announced the briefing schedule. Both sides are to file closing briefs simultaneously within 90 days (by Monday, June 3). Thereafter, each side will file reply briefs within 30 days (by July 5). At that juncture, Judge Horn will take the case under consideration and issue a "timely written decision." No hearing date was set for potential applications for relief from removal by General Garcia.