

FORUM

Taking On the Tyrants

Attorneys doing good: A Bay Area nonprofit helps expatriates seeking justice against their oppressors

By Richard C. Paddock
September/October 2010

When Mohamed Ali Samantar came to the United States from war-torn Somalia in 1997, he hoped to live quietly in retirement in suburban Virginia. But thanks to a little-known San Francisco human rights group, the former Somali official instead became the focus of a landmark U.S. Supreme Court human rights case.

Samantar, who served as defense minister and prime minister of Somalia during the 1980s, is accused of responsibility in the torture, rape, imprisonment and deaths of thousands of Somali civilians. The non-profit Center for Justice and Accountability, which has pursued human rights abusers for more than a decade, filed a civil suit against him seeking damages on behalf of five victims and survivors. After six years of legal wrangling, the Supreme Court ruled unanimously in June that Samantar could be sued in the United States under a law that dates to 1789. The case now heads back to district court in Virginia for trial.



The small legal center, with offices in the historic Flood Building on Market Street and a staff of just 11, may seem an unlikely organization to win a major human rights victory at the high court. But it has a proven track record of winning high-profile cases around the country by teaming up with law firms that donate their expertise and thousands of hours of attorney time. With pro bono help, CJA has brought legal actions in cases from a dozen countries, including the assassination of Archbishop Oscar Romero in El Salvador, abuses by Haiti death squads, the torture of

Falun Gong practitioners in China and atrocities by an Indonesian general during East Timor's independence referendum. Most recently, the center filed a complaint with the New York Office of Professions against psychologist John Leso for his part in designing and implementing a system of abusive interrogation at the U.S. prison at Guantanamo.

“We are the only U.S.-based accountability organization dedicated to bringing human rights cases against individual human rights abusers who have sought a safe haven in the in the United States,” said Pamela Merchant, an attorney and the center’s executive director. “Our mission is to represent torture survivors and family members who have suffered human rights abuses.”

The 12-year-old center has a remarkable track record: it has not lost a case that has gone to trial. It has won judgments for its clients totaling \$160 million, although most of the judgments have amounted only to moral victories. Plaintiffs have collected just \$1.1 million – more than half of it from a former Haitian colonel who came to public attention in Florida when he won the state lottery. “It’s never about money,” said William Aceves, an associate dean at the California Western School of Law in San Diego who serves on the CJA board. “It’s about an opportunity to present a case before a judge and jury, to be able to point a finger at the perpetrator and say, ‘What you did was wrong.’”

Merchant said that about 500,000 victims of torture and human rights abuses live in the United States, many of them granted political asylum. Amnesty International estimates that 1,000 former officials and military officers who committed human rights violations also live here, sometimes in the same communities as their victims.

A petite former federal prosecutor, Merchant is an energetic, hands-on manager and lawyer who is passionate about winning justice for victims of torture. The center’s staff attorneys, who share her commitment, have a mix of experience in private law firms and non-profit work.



One of the keys to the center’s success is enlisting the pro bono help of private law firms. Once CJA decides to file a suit against an alleged human rights abuser, it looks for a law firm in the jurisdiction with experienced litigators and the resources to help take on a complex, potentially time-consuming case. The center reported last year that it received nearly 6,000 donated hours valued at \$2.5 million from 15 law firms, private investigators, law school legal clinics and other volunteer attorneys.

“These cases are tremendous opportunities,” said Merchant, a former federal prosecutor. “The clients are so inspiring to work with. This is an opportunity to work on something you are passionate about and hone your legal skills.”

Among the law offices that have assisted CJA in pursuing human rights cases are Morrison & Foerster; Wilson Sonsini Goodrich & Rosati; Cooley Godward Kronish; Aiken Gump Strauss; and the now-defunct firm Heller Ehrman. “We have been fortunate to work with some of the best firms in California and the country,” Merchant said. “We really value working with the big firms. We couldn’t do what we do without that partnership.”

The Center for Justice and Accountability was founded not by a lawyer but by psychotherapist Gerald Gray, who has been treating victims of torture in San Francisco since 1985. Gray

recounts that in the mid-1990s, he received an urgent call from San Francisco General Hospital seeking help for a newly arrived Bosnian War[cq] refugee. When he got to the hospital, the refugee was distraught because he had come across his torturer living in San Francisco.

Gray feared the man might kill his tormenter, but instead the traumatized refugee fled to the East Coast. His torturer was never held accountable. “I can’t say why he decided not to hunt this guy,” Gray said. “Maybe fear of the police, or maybe he couldn’t bring himself to kill someone.”

The incident inspired Gray to find a way to help victims overcome their trauma by bringing their abusers to justice. With Amnesty International’s assistance, he established CJA in 1998. “The law gives us a chance to do something in a civilized way,” said Gray, who serves on the center’s board and has founded other groups to aid torture victims. “If we didn’t have the law, or if it didn’t work, we would be stuck back in that primitive place of flight or fight.”

In bringing its lawsuits, CJA relies primarily on the Alien Tort Statute of 1789 and the Torture Victims Protection Act of 1991, which allow victims of crimes committed abroad to sue for damages in U.S. courts. “They’ve been amazingly effective, especially given their small size and limited resources,” said Vienna Colucci, Amnesty International USA’s managing director.

The Samantar case originated in the San Francisco Bay Area in 2002 when three immigrants from Somalia — brothers Bashe and Omar Yousuf and their cousin, Amina Jireh — learned by chance that the former Somali leader was living freely in the United States.

“I was really mad,” recalled Omar Yousuf, an engineer with the California Department of Transportation. “The person who destroyed the country and killed thousands and thousands of people was in the United States and we couldn’t do anything about it.”

Jireh said her nephew, a young doctor, was among those arrested and killed by government forces. His body was dumped in the street in broad daylight. “The regime that was ruled by Samantar killed my nephew and now Samantar is sitting in Virginia having coffee,” she said. “We allow him to be here and have a safe haven.”



The three met with lawyers from CJA and decided to pursue Samantar in court. Bashe Yousuf became the lead plaintiff. He had been a successful businessman in Somalia but was arrested in 1981 after he led an effort to clean up a hospital and obtain medical supplies from foreign charities. The government falsely accused him and his colleagues of planning a rebellion and conspiring with foreign agents. He was water boarded, tied up, beaten, shocked and held in solitary confinement for six years. He

later received political asylum in the United States and became a U.S. citizen. He now lives near Atlanta.

The other plaintiffs are Aziz Mohamed Deria, whose father and brother were killed when Somali government forces attacked civilians in 1988; a man who survived execution by firing squad and hid under dead bodies until he could escape; a young woman who was arrested, repeatedly raped and held for years in solitary confinement; and a man whose two brothers were arrested and executed.

At the time, Somalia was ruled by Siad Barre, who seized power in a 1969 military coup. Samantar, a general, served as his defense minister and first vice president from 1980 to 1986 and then as prime minister until 1990. The regime used summary execution, rape, torture and imprisonment without trial to control the population, particularly in Somaliland, a secessionist region in the northwestern part of the country.

“The abuses in Somalia were well documented,” Merchant said.

After the regime collapsed in 1991, the country descended into chaos. Today, Somalia is a base for Al Qaeda and for pirates who attack commercial vessels.

“This case will set a precedent for a lot of countries that are ruled at gunpoint,” said Jireh, who today works as an insurance sales representative in the Bay Area. “He’s a war criminal who is living like you and me. That shouldn’t be O.K.”

Samantar fled Somalia, lived for a time in Italy and eventually arrived in the U.S., where he settled in Fairfax, Virginia. He denies the charges against him but declined through one of his attorneys to be interviewed. CJA filed suit against him in 2004.

His lawyers fought for years to keep the case from going to trial. They argued that he was acting in his official capacity when the alleged crimes occurred and was protected from suits by a U.S. law that grants immunity to foreign states. “Mr. Samantar vigorously denies the particular allegations in the suit, none of which have ever been determined to be true by any court of law,” said attorney Shay Dvoretzky, a partner in the Washington law firm Jones Day.

In 2007, Samantar won at the district court level when the judge ruled that he had immunity as a foreign official and dismissed the suit. The 4th Circuit Court of Appeals subsequently overturned the decision, ruling that the law applies to foreign states, not individuals. Samantar then appealed to the Supreme Court.

A ruling by the high court that individuals could not be sued under the Alien Torts Statute or the Torture Victims Protection Act would have established a precedent making it extremely difficult for CJA to continue pursuing alleged human rights abusers.

“Samantar should not be above the law and our clients should have their day in court,” Merchant argued.

Samantar’s appeal received support from an unusual collection of allies, including the government of Saudi Arabia and pro-Israel groups who filed amicus briefs expressing concern that a ruling against Samantar could expose officials from their countries to similar lawsuits.

The plaintiffs countered with amicus briefs from former diplomats, retired military officers, torture victims, professors, members of Congress and Holocaust survivors arguing that individuals who were responsible for human rights abuses were not entitled to immunity in the United States. Much of the legal work was done by 10 law firms that worked pro bono on the case.

“The whole point of the law is to prevent people like Samantar – who use their power to order torture, rape and killings — from seeking a safe haven in the United States,” Merchant said. “The bottom line is that this man is not above the law.”



In June, the U.S. Supreme Court issued a 9-0 ruling agreeing with the plaintiffs that Congress did not intend to exempt officials from personal liability for alleged human rights abuses. “There is nothing to suggest we should read ‘foreign state’ ... to include an official acting on behalf of the foreign state, and much to indicate that this meaning was not what Congress enacted,” wrote Justice John Paul Stevens in one of his last opinions for the court.

On the day the decision was announced, Merchant said she was thrilled with the ruling. “In the United States, our government officials are not above the law,” she said, “and the Court’s unanimous ruling today confirms that foreign government officials, who come and avail themselves of the benefits and privileges of living in the U.S., are not above the law either.”

Deria, one of the two plaintiffs who have been publicly identified, praised the Supreme Court ruling. “I had faith in the Constitution and the legal system and I understand that this country represents the fairness of humanity,” he said.

Deria, who now lives in Oregon, came to the United States as a student in 1983 at the age of 19. His father, a successful businessman, and his brother were among 5,000 people killed when government forces attacked civilians in Hargeisa, the largest city in Somaliland, in 1988. “We lost everything we had,” he said, “emotionally and physically.”

The Somali community in the United States is watching the Samantar case closely, Deria said, in part because a number of other former top military officials who served in the regime also have taken up residence here. “This is not supposed to be a country that harbors war criminals,” he said. “We have a lot of evidence against Mr. Samantar. He has done a lot of harm and we are ready to meet him in court.”

For Merchant, the Supreme Court ruling is an affirmation of the years of work by the center to seek justice for victims of atrocities around the world. “I have never had a job where I felt so inspired by the courage and the strength of our clients,” she said. “They are not vindictive. They don’t want to use violence back. They want to use the courts and stand up for a principle that’s bigger than themselves. It’s truly moving.”