

# Exporting Justice

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[Chart: Human Rights Cases](#) \*\*

One morning in November 1981, three armed Somali security officers showed up at Bashe Abdi Yousuf's warehouse. They pushed him into a Land Cruiser, drove him to a detention center and tortured him for two months.

The 29-year-old had been volunteering for an organization that cleaned and bought supplies for the sole hospital in Somalia's second largest city.

In Somalia, that was a crime.

Charged with high treason, Yousuf spent 6 1/2 years in a dark cell before he was granted a visa to immigrate to the United States.

Now, with the help of San Francisco's Center for Justice and Accountability, Yousef and other victims are going after one of the officials they say was responsible for their ordeal.

Their civil suit in Virginia federal court alleges Mohamed Ali Samantar, Somalia's minister of defense at the time, is liable for torture, murder and other war crimes.

"Because there has been no investigation by an international or regional institution," said Helene Silverberg, the CJA staff attorney heading up the litigation, "this case could be it in terms of documenting the scope of abuses, the injustices suffered by a lot of innocent civilians at the hands of a brutal regime."

CJA is the only nonprofit in the country pursuing foreign-born U.S. residents for alleged abuses committed before their arrival here. The goal of its civil suits is to expose criminal behavior that would otherwise go unpunished, giving abuse victims some measure of justice even if it only comes in the form of an often uncollectible civil monetary judgment. Since its founding seven years ago, CJA has filed 12 suits against 13 defendants.

The suits are challenging to work on -- and controversial in some circles. While the CJA has won most of the cases that have gone to trial, the judgments are largely symbolic. Some defendants aren't present, either because they refuse to participate, are in hiding or have left the country. It's difficult to find witnesses and sometimes hard to get them to testify.

Still, CJA lawyers say, the suits put pressure on U.S. and foreign governments to pursue criminal cases against human rights violators and help prevent the U.S. from becoming a

safe haven for torturers.

"We don't kid ourselves that [these civil cases] are somehow perfect justice for our clients," said Matthew Eisenbrandt, the center's litigation director. "Most of our clients have said the mere fact of getting into court and having their cases heard is an important step."

But Samantar's attorney, Fred Goldberg, says CJA has no facts to back its claims against Samantar, who now lives in Virginia, and that his client had nothing to do with what happened to the plaintiffs.

"I don't doubt bad things happened in Somalia," during the regime of former Somali President Siad Barre, Goldberg said. "That doesn't mean everyone connected to him had knowledge of it or was responsible."

Goldberg, of Spierer & Goldberg in Bethesda, Md., likened the targeting of his client to holding Secretary of Defense Donald Rumsfeld responsible "if some brigade went amok."

## **ON A MISSION**

To construct her case against Samantar, Silverberg traveled to Somalia twice, meeting with the Somaliland National Human Rights Network and talking to people who were tortured and terrorized in the 1980s under Barre's regime.

Before joining the CJA, Silverberg worked as a civil litigator at Morrison & Foerster and then Quinn Emanuel Urquhart Oliver & Hedges. She called her work at the firms "excruciatingly boring" and decided she wanted to do something politically meaningful.

She started working at CJA as an unpaid, full-time volunteer in 2003. At the end of the year she was given responsibility for the Somalia cases and joined the staff as a paid attorney.

"I thought if I was going to work 12 hours a day, I wanted it to be in the service of a cause I believed in," Silverberg said.

The Center for Justice and Accountability's seven-person staff -- an executive director, four attorneys, a paralegal and an office manger -- work out of a sparse, five-room office in the Flood Building on San Francisco's Market Street. Tacked to the walls are "wanted" posters and photographs of Salvadoran Archbishop Oscar Romero. Last year, the center won a \$10 million verdict against one of the men held liable for his 1980 assassination.

Most of the attorneys are new to the legal field, but not to human rights work. Eisenbrandt, for example, worked with health and human rights organizations in South America before getting his J.D. in 2001. Moira Feeney, who heads up suits by Haitians, passed the bar last year.

Silverberg, who got her J.D. in 2000, had been a professor for 10 years, teaching American politics at Princeton University and UC-Santa Barbara before law school.

Sandra Colliver, CJA's executive director, was one of the founders of Amnesty International USA's Legal Support Network and previously worked for the U.N.'s human rights division in Sarajevo.

CJA attorneys earn only a fraction of what a first-year associate at a big law firm makes - most of them between \$35,000 and \$44,000.

The center relies on grants and donations to fund the bulk of its operations, which cost about \$550,000 per year.

## **OUTSIDE COUNSEL**

Large law firms are a major source of money and legal muscle.

Sometimes CJA approaches a firm for assistance, but Eisenbrandt said he gets frequent calls from lawyers who are eager to work on human rights cases. Though big firms can get pro bono hours and trial experience for associates, it can be difficult to get them on board.

There may be a conflict of interest if the firm has a client that may be a defendant or potential defendant in a human rights case, Eisenbrandt said.

And then there is the issue of cost. Colliver said firms collectively donate 5,000 to 6,000 hours of attorney time per year and \$200,000 to \$300,000 in out-of-pocket expenses.

Wilson Sonsini Goodrich & Rosati and Morrison & Foerster have handled CJA cases, and attorneys at Cooley Godward are now working on the case against Samantar and a separate suit against a Somali army commander.

Heller Ehrman White & McAuliffe attorneys helped CJA investigate and prepare the case against one of the men responsible for Oscar Romero's murder.

The defendant was tried in absentia and can't be found, which means the \$10 million judgment likely won't be collected.

Heller Ehrman partner Nicholas van Aelstyn led the trial team, a job that meant numerous trips to El Salvador to interview witnesses, including the one who testified he drove Romero's assassin and saw the shots fired.

"In some ways it was the high point of my career so far," van Aelstyn said of the case.

Leo Cunningham, a partner at Wilson Sonsini Goodrich & Rosati, led the trial team in

CJA's suit against a member of Augusto Pinochet's secret police.

After a monthlong trial in Miami in 2003, the jury awarded \$4 million to the family of murder victim Winston Cabello. It was the first trial in the U.S. for atrocities committed in Chile during the Pinochet era. The verdict was upheld last month by the Atlanta-based Eleventh Circuit U.S. Court of Appeals -- a victory Wilson Sonsini trumpets on its home page.

"It was one of those fabulous things," Cunningham said. "The case is truly historic in every sense of the word."

CJA pursues civil suits under two federal statutes -- the 1789 Alien Tort Claims Act and the 1991 Torture Victim Protection Act. Both laws allow survivors of human rights abuses to sue those responsible in federal court. The perpetrator generally must be served with the suit while present in the United States for the court to have jurisdiction.

While the older law has no statute of limitations, the 1991 law requires that a suit be filed within a 10-year period. But CJA's Colliver said Congress intended the law to be broadly interpreted, so the clock doesn't begin ticking at the time of the crime, but rather when a case can be brought against the defendant. Colliver said the absence of the defendant from the jurisdiction or the defendant's concealment of his presence in the U.S. are among the acceptable reasons to delay filing a suit.

Samantar's lawyers have filed a motion to dismiss the suit against him, arguing that the time to bring the case has expired under the statute of limitations and that he may be entitled to sovereign immunity given his position as a former state official.

So far, CJA has had mixed results arguing its cases are timely.

The Eleventh Circuit ruled in the Chilean case that the defendant's misconduct justified delay. But two weeks earlier, the same court went the opposite way and overturned a Miami jury's \$54 million verdict against two Salvadoran generals for torture. CJA has requested a rehearing by the full court.

## **AN IMPORTANT DEBATE**

Of course, the group isn't without critics. Its main foes are those who support the targets of CJA's suits, but Eisenbrandt said some academics question whether civil suits are the best tactic against human rights abusers.

"It's an important debate to have," Eisenbrandt said. "I agree this is not the ideal solution, but it is a piece of a much larger puzzle."

Getting witnesses to testify also poses a problem. In every case, there are reluctant witnesses because civil trials don't put the perpetrators behind bars. Silverberg said one person familiar with Samantar has so far declined to testify since he regards the suit

against Samantar as "merely symbolic."

Silverberg sympathizes with the witness's frustrations but says CJA lawsuits are one of the few tools for holding someone accountable for their crimes. She argues that it is a form of punishment for defendants to be found by U.S. courts to be responsible for committing atrocities.

Samantar's attorney Goldberg respects CJA's mission, although he disagrees with its tactics.

"I think they're do-gooders -- and I don't say that pejoratively," Goldberg said. "I'm glad someone plays the role of assuring bad acts don't go unnoticed. ... But I don't think they should have picked on Mr. Samantar, at least not now."

The Samantar suit is pending before Judge Leonie Brinkema in the Eastern District of Virginia. She has asked for a report on the U.S. State Department's position on the case.

Goldberg says the suit will be dismissed if the department determines that it is disruptive to U.S. foreign relations. But Silverberg thinks that's unlikely since the government has, to date, only intervened in cases involving a sitting official.

For Yousuf, the lead plaintiff, the case is the last leg in his journey from prison. He came to Berkeley as a refugee in 1991 and is now a computer technician in Atlanta living with his wife and two daughters.

Yousuf said he had nightmares for a long time about his imprisonment in Somalia.

"I'm really glad they are helping me have my day in court," Yousuf said. "This way I can let [Samantar] have what he would not let me have when I was in his hands -- legal recourse to defend myself."

## **\*\*Human Rights Cases**

A partial list of civil lawsuits by the Center for Justice and Accountability

- Armando Fernandez Larios

In October 2003, a Miami jury found former Chilean General Armando Fernandez Larios liable for the torture and murder of Winston Cabello and awarded Cabello's family \$4 million. Larios was a reputed member of the Caravan of Death, a roving team of secret

police that executed people following Augusto Pinochet's military coup in 1973. The Eleventh Circuit U.S. Court of Appeals upheld the verdict in March.

- Salvadoran generals

A Florida jury found two Salvadoran generals, both former ministers of defense, responsible for the torture of three Salvadoran refugees. In its July 2002 verdict, the jury ordered the generals to pay \$54 million to the plaintiffs. The Eleventh Circuit U.S. Court of Appeals overturned the verdict in February. The CJA is appealing the decision.

- Alvaro Saravia

A U.S. district judge in Fresno found former Salvadoran captain Alvaro Saravia liable for his role in the 1980 assassination of El Salvador Archbishop Oscar Romero. In his September 2004 ruling, Judge Oliver Wanger ordered Saravia to pay \$10 million to the plaintiff, a relative of the archbishop. Saravia, who had been living in Modesto, went underground and did not appear at trial. His whereabouts are unknown.

- Emmanuel Toto Constant

In January, CJA and the Center for Constitutional Rights filed a lawsuit against Constant, leader of the paramilitary death squad FRAPH, in New York federal court for torture and crimes against humanity. The U.S. government sought to deport Constant in 1995, but following a 60 Minutes interview in which Constant threatened to reveal the CIA's involvement in the formation of FRAPH, he was released from detention. He is now living in Queens, N.Y.

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