

Jeff Davis
Thoughts on Clients

Together with my colleague George Daly, I have represented three prisoners at Guantánamo. One is still imprisoned, one was released, and one committed suicide just days before he was scheduled to be released, though he was unaware of his pending release, to the best of our knowledge.

Zalita

The man who is still imprisoned is named Abdul Ra'ouf Zalita. Mr. Zalita was originally from Libya. He was serving in the Libyan Army when he deserted and fled Libya because of religious persecution.

He lived in several different countries before settling in Afghanistan, and marrying and fathering a child. When the fighting in Afghanistan grew close to his home, he took his family and fled to Pakistan. Sometime while in Pakistan, he was turned in to authorities for a bounty, and ultimately ended up in Guantánamo.

Mr. Zalita has been cleared for release, but the government has announced that it intends to return him to Libya, not to his home in Afghanistan, nor to Pakistan, where he was arrested. Mr. Zalita fears that if he is returned to Libya, he will be imprisoned, tortured, and ultimately killed, so we have asked the government to change the destination country. Officially they have refused.

Based on this refusal, and Mr. Zalita's very reasonable fear for his safety, we asked the District Court to block his transfer to Libya. The Court initially refused to act, on jurisdictional grounds. The Court of Appeals affirmed, also on jurisdictional grounds, and the U.S. Supreme Court declined to act, without opinion.

During the court proceedings, I called the then general counsel of the Department of Defense, Jim Haynes, who I knew from his days as a U.S. district court law clerk in Charlotte, where I live. I told Mr. Haynes about Mr. Zalita's plight, and explained that if he was returned to Libya, we intended to tell the story to the press, and we believed that it would be an embarrassment to the administration, given the fact that Mr. Zalita was determined to be deserving of release, but that he was being sent home to almost certain torture and death. I also urged him to read the classified parts of Mr. Zalita's files, the contents of which I am not at liberty to disclose.

Mr. Haynes listened attentively, thanked me for the call, and never got back to me. However, over a year and a half later, Mr. Zalita has not been returned to Libya, and remains in Guantánamo. During this time, our colleagues at CCR have been attempting to obtain permission from other countries, including Pakistan and Switzerland, for Mr. Zalita's release there.

Mr. A

George and I also represented a man who did not want to call attention to himself, so I have called him Mr. A. Mr. A was an assistant principal at a high school in Saudi Arabia. He decided to do some humanitarian relief work in Afghanistan, after some natural disaster there. While on his way home to Saudi Arabia afterwards, he had the misfortune to try to cross into Pakistan at the same time as someone who might actually have been fighting in Afghanistan.

Mr. A was arrested and sent to Guantánamo. He was ultimately cleared for release. When we were told this, we were also informed that we were not allowed to disclose this to anyone, including Mr. A. So George went to Guantánamo to visit Mr. A to ask him, in the abstract, *if* he were cleared for release, would it suit him to be returned to his home. He answered yes but made it clear that if he were released, he did not want us to continue any proceedings on his behalf, not even to continue the habeas proceedings to clear him. When he was released, we followed his instructions.

Mane Shaman Al-Habardi, also known as Manei al-Otaibi and Manei al Utaybi

I have never known why there was so much confusion over this man's name, but there was, though we can be certain who we are talking about because of his prisoner ID number, 588. And his case is far and away one of the most tragic of all the Guantánamo cases, because he committed suicide on the eve of his scheduled release, apparently not knowing he was to be released.

Mr. Utaybi died with three other prisoners. When the government announced that three detainees at Guantánamo had committed suicide, I immediately inquired whether any of the three were my clients. I was told no. Later that same day, I was told that indeed one of the suicides was my client Mr. Utaybi, and that he had left a suicide note. I immediately asked for a copy of the note, as well as a copy of the video tapes of the surveillance camera in his area, but that request was denied.

Because of the information that the government *did* release, and because of their refusal to release the suicide note, George and I were initially skeptical that his death had actually been a suicide. I made a broad FOIA request, and was denied access to anything at all. I sued in federal court in Charlotte, and the government has now released over 3000 pages of documents to me. From an examination of those documents, George and I have concluded that Mr. Utaybi's death was indeed a suicide, and that he had been one of the hunger strikers who was force-fed, against his will.

As I mentioned above, Mr. Utaybi had been cleared for release just before his death. At the same time George went to Guantánamo to see Mr. Zalita, he also attempted to see Mr. Utaybi. We were prohibited from telling Mr. Utaybi of his impending release, as well, but George's goal in seeking to see him was the same as with Mr. A, to ask in the abstract if Mr. Utaybi wanted to return to Saudi Arabia if given the chance.

When George arrived at Guantánamo and asked to see Mr. Utaybi, he was told by the guards that Mr. Utaybi refused to see him. We do not know whether this was true, because we are aware of many instances when guards reported to other lawyers of a client's alleged refusal to see the lawyer, that turned out to be untrue, and we are aware that Mr. Utaybi's condition had deteriorated because of the hunger strike.

In any event, what we *do* know is that:

1. George did not see him.
2. He had been cleared for release.
3. We were forbidden from telling him that, so we suspect that nobody had told him.
4. He died days later of suicide.