

Seeking Justice for Terrorist Victims

By Philip Berroll

The relatives of several American victims of terrorism have tried to achieve some degree of closure by suing foreign governments, such as Iran, which sponsor terrorist groups. A number of plaintiffs have been successful, winning large court judgments.

But in a cruel irony, they have been prevented from receiving any of the money – by their own government.

The latest such case involves the families of Sarah Duker and Matthew Eisenfeld, the Americans killed in a Jerusalem bus bombing in February 1996. Because the Iran-backed terrorist group Hamas claimed responsibility for the attack, the families sued the Iranian government for damages. On July 11 of this year, the U.S. District Court in Manhattan ruled in their favor, ordering Iran to pay them more than \$300 million.

But when – if ever – they will receive the money is still uncertain.

The problem goes back to a sweeping law passed by U.S. legislators in the wake of the Jerusalem bombing and other acts of terrorism that claimed American victims. In April 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act, designed to combat terrorism against Americans at home and overseas. One of its provisions gave plaintiffs the right to sue, in American courts, foreign nations named by the U.S. government as sponsors of terrorism – countries whom the State Department had previously branded “rogue nations,” but now describes with the more benign-sounding term “states of concern.” (In addition to Iran, the current list includes Cuba, Iraq, Libya, North Korea, Sudan, and Syria.)

Then, in 1998, Congress passed a related measure calling for the U.S. State and Treasury Departments to assist terrorism-suit plaintiffs in recovering the money awarded them in court. There was just one catch: the President had the right to waive such assistance in the interests of national security.

Since then, the Clinton Administration has invoked the waiver in several high-profile cases. The family of college student Alisa Flatow – killed in a bus bombing by the Iran-backed Islamic Jihad on the Gaza Strip in April 1995 – went to court against the Islamic republic, and was awarded \$247.5 million in March 1998. They have yet to see any of the money; the Administration has gone to court to block the family from collecting. And they have taken similar action in the Duker-Eisenfeld case.

According to Washington, DC attorney Steven Perlis, who represents the Duker, Eisenfeld and Flatow families, the award money is supposed to come from Iranian assets currently held by the U.S. government. These amount to “somewhere between \$406 million and \$1.5 billion” in cash, he says, and “probably another \$25-30 million in real estate.

Mr. Perlis says that after he “moved to attach those assets,” the Administration claimed that “because this property is in the custodial control of the United States, it is not attachable unless the government of the United States waives its governmental immunity to attachment. They could have made the assets available – all they had to do was say, ‘We are immune, but we waive our immunity.’ They declined.”

Mr. Perlis notes that he was not told of the specific reasons for the Administration’s position – “All they have to do is assert their immunity,” he says; “they are not required to give an explanation” – and feels it would be “inappropriate” to speculate.

But some foreign policy experts have argued on national-security grounds that going after Iranian assets could be counterproductive. Harvard Law School professor Anne-Marie Slaughter and journalist David Bosco support this view in a recent article, “Plaintiff’s Diplomacy,” in the journal *Foreign Affairs*, generally known as the “Bible” of the foreign policy establishment.

Slaughter and Bosco write that suing Iran and other terrorism-sponsoring nations exposes the U.S. to retaliation against its own assets overseas; politicizes the courts, “mak[ing] American tribunals instruments of particular foreign policies;” and could make the target governments “defensive” while “discouraging dialogue, engagement, political reform, and integration... into international legal and financial regimes.” The writers suggest an

alternative: that the government set up a fund to compensate victims of terrorism, then negotiate “at the appropriate time” for terrorist-sponsor governments to make payments into the fund.

Mr. Perlis, however, is pursuing a more direct approach, on several fronts. He continues to negotiate with the Administration in the hopes of resolving the matter. But he is also working in support of legislation – the Justice for Victims of Terrorism Act, co-sponsored by retiring Sens. Frank Lautenberg (D-NJ) and Connie Mack (R-FL) –that would allow the families to collect at least some of the damages awarded them in the courts.

Mr. Perlis is well-connected on Capitol Hill – he worked as a counsel to the Senate for six and a half years – and very determined.

“We’ll simply continue,” he says, “and eventually we’ll win.”

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