
Combating State-Sponsored Terrorism With Civil Lawsuits:

Anderson v. Islamic Republic of Iran and Other Cases

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In the Fall of 2000, Congress passed legislation to enable certain U.S. citizen victims of foreign-state-sponsored terrorism to collect on judgments they had obtained in civil lawsuits. The legislation provided, among other things, that certain specified terrorist acts that had been sponsored by the Islamic Republic of Iran could now have a portion of their judgments paid by the U.S. Treasury as a credit against frozen Iranian assets. The legislation targeted Iran because it was clear that terrorist organizations such as Hizbollah and Hamas—which have committed numerous terrorist acts in the Middle East since the early 1980s—have been funded and sponsored by Iran, particularly in Lebanon and Israel.

Most prominent among the victims covered by the legislation was Terry Anderson, a well-known former Associated Press reporter who was kidnapped in Beirut, Lebanon in March of 1985, and held hostage for more than six and one half years. The legislation also covered other victims of Iran's terrorism, including former hostages Thomas Sutherland and Father Lawrence Jenco, both of whom were held for a time with Anderson, and Colonel Williams Higgins and Navy Lieutenant Robert Stethem, both of whom were brutally murdered. The authors' law firm, Crowell & Moring

LLP, represented Anderson, Sutherland, and others in their lawsuits against Iran, as well as in efforts that led to enactment of the 2000 legislation.

Terry Anderson in particular received significant attention with the enactment of the 2000 legislation, in part because he was a member of the press, but also because he had been kidnapped and held hostage in horrid conditions longer than any other American. Those facts coupled with the realization that Anderson and several other terrorism victims and their families would receive significant portions of their multimillion dollar judgments against Iran made for a compelling story. It had been a long road from Anderson's release from captivity in late 1991 to the enactment of this legislation, and an even longer road from his kidnapping in March of 1985.

Evolution of a Terrorist Movement

To understand how this series of events unfolded, it is first necessary to understand that Lebanon has long had a tenuous internal political balance as a result of the fact that Christians and Muslims have lived amongst each other and shared the levers of power. In 1975, that delicate balance broke down and a fifteen-year civil war erupted. The Iranian revolution in 1979 and the 1982 Israeli invasion of

southern Lebanon provided an opportunity for terrorist activities that Iran seized upon. In the early 1980s, Iran began recruiting members of Lebanon's Shiite Muslim community—traditionally at the lower end of the Lebanese economic strata and ripe for disaffection—and created Hizbollah, literally meaning "Party of God." The Iranian Revolutionary Guard trained many Shiites in Lebanon's central Bekka Valley and ingrained in them the goal of eradicating all western influence from Lebanon, particularly anything associated with America and France.

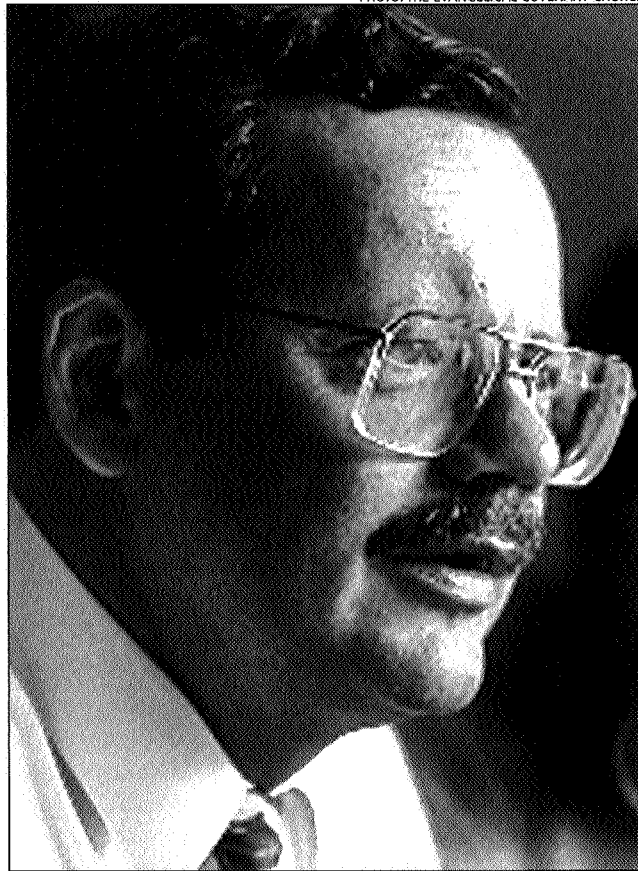
Hizbollah, acting as Iran's agent, took its first step towards this goal with the kidnapping of David Dodge in mid-1982. At the time, Dodge was the acting president of the American University of Beirut ("AUB"), a world-renowned educational institution that had been founded by Americans in the mid-nineteenth century. Although AUB is a private institution and many Arab leaders and professionals have been educated there, it was perceived by Hizbollah and Iran to be a highly visible symbol of the United States. Thus, Dodge, whose ancestors had an association with the university going back to its founding, was perceived to be a useful vehicle by which Hizbollah could send its message in Lebanon. Hizbollah held Dodge hostage for one year before releasing him in

mid-1983. For part of that time, Dodge was actually held in Tehran.

In 1983, Iran and Hizbollah escalated their campaign to eradicate the West from Lebanon by embarking on a series of terrorist events that continued for several years. In April of 1983, a suicide truck bomber plowed into the U.S. Embassy in Beirut, killing and wounding scores of people. In October of 1983, similar suicide bombing attacks against the U.S. Marine Barracks at the Beirut airport and French military encampments killed hundreds of American and French soldiers. In January of 1984, Malcolm Kerr, David Dodge's successor as president of AUB, was assassinated as he exited an elevator outside his office. Later that year, Hizbollah conducted a suicide bombing at the U.S. Embassy "Annex" in Beirut—the site where all embassy functions had been moved in the wake of the 1983 embassy bombing.

In addition, Iran and Hizbollah embarked on a series of kidnappings and hostage takings designed to attack various specific segments of Western influence in Lebanon. Beginning in 1984, Hizbollah kidnapped Americans from various segments of society, including William Buckley, the local Central Intelligence Agency station chief; Reverend Benjamin Weir, a Presbyterian missionary who had lived in Lebanon for more than thirty years; Father Lawrence Martin Jenco, a Catholic priest; Terry Anderson; David Jacobsen, of the AUB Medical School; Joseph Cicippio, an AUB accountant; and Thomas Sutherland, acting dean of the AUB Agriculture Department. In the ensuing several years, numerous other Americans and Western Europeans were kidnapped and held hostage, in many cases, for several years.

Conditions for the hostages were inhumane. Their diet was uneven at best. The hostages were usually chained and blindfolded for weeks on end in



Terry Anderson

dungeons throughout the country. They were permitted only one trip to the bathroom per day and often not permitted to clean themselves adequately. As a result, the hostages often became ill with dysentery or worse, and some, such as Buckley, did not survive the ordeal. Occasionally, the hostages were also beaten or tortured both physically and mentally. Thomas Sutherland testified at his trial about a beating he had received for the sin of removing his blindfold one evening so that he could see the moon. Worst of all, according to Sutherland and others, is that when the hostages were transferred from one dungeon to another, they were wrapped from head to toe, like mummies, in brown duct tape. Only a small slit near their nose was left for breathing. The hostages were then slipped into a false truck bottom for transport to their next location. In this position, they usually were forced to breathe truck exhaust for hours and often became sick. Upon arrival at their next location, the duct tape was unceremoniously pulled from their bodies,

causing the hostages great pain.

Three hostages, Weir, Jenco, and Jacobsen, were released separately in late 1985 and into early 1986 as a result of the Iran-Contra arrangement that was denied at the time by the Reagan Administration. When news of Iran-Contra became public, the effect was to shut down all hostage releases for several years. It was not until 1990 that Hizbollah and Iran again began releasing hostages on a regular basis. Nevertheless, even that process took many months so that by the time Sutherland was released in November of 1991 and Anderson in December of 1991, both had been held hostage for well over six years.

Combating Terrorism in the Courts

Following their release from captivity, many of the former hostages, including Anderson, decided at various points to

write books about their experiences. However, before doing so, Anderson wanted to learn as much as he could about his captors. One of the avenues he pursued to obtain this information was the Freedom of Information Act ("FOIA"). When the U.S. government was not forthcoming in releasing official documents related to Anderson's captivity and his captors, he retained our firm on a *pro bono* basis to pursue litigation on his behalf under FOIA. Ultimately, that litigation yielded in the early and mid-1990s information and documents that made clear that Iran had funded Hizbollah in Lebanon, Hamas in Israel, and various other terrorist organizations and activities.

In the meantime, Congress and the Clinton Administration were looking for various tools to combat international terrorism. That effort culminated in 1996 with the passage of legislation that permitted, for the first time, lawsuits against foreign countries that were specifically designated as "state sponsors of terrorism." Countries so designated at

the time were Cuba, Iran, Iraq, Libya, North Korea, Syria, and Sudan. Statutes of limitation that would normally bar such lawsuits in the late 1990s for events that occurred as far back as the early 1980s were specifically waived by Congress for a limited period of time so that victims and families that could possibly file such lawsuits would have time to determine whether it was something in which they were interested.

At first, only a few lawsuits were filed. Among these were lawsuits filed by the Duker and Eisenfeld families against Iran arising out of a bus bombing in Israel that had been planned and carried out by Hamas under Iran's sponsorship. As a result of that bombing, the Dukers' daughter and the Eisenfelds' son—American students in Israel—were killed. Iran failed to respond to the lawsuit and, following a trial in federal court in Washington, U.S. District Judge Royce C. Lamberth awarded the families millions of dollars each for the loss they had suffered. Former hostages Cicippio, Jacobsen, and Frank Reed filed a suit against Iran which yielded a similar multimillion dollar judgment. Terry Anderson also filed suit against Iran, and in March of 2000, he and his family were awarded a judgment of more than \$41 million dollars in compensatory damages and \$300 million in punitive damages.

Collecting on Judgments

The passage of the 1996 legislation was only the first step for these victims and their families because the legislation only permitted them to file suit and pursue a judgment. The difficulty of actually collecting any judgment remained a problem to be resolved. In 1998, Congress enacted additional legislation that permitted the targeting of frozen assets held in the United States by foreign state sponsors of terrorism. However, because frozen foreign assets are traditionally seen as tools of foreign policy uniquely within the control of the President, Congress further provided that the President could waive this provision to go after frozen assets as he saw fit. Although he signed the 1998 legislation into law, President Clinton exercised a blanket waiver under the law's waiver provision that effectively prevented

anyone from pursuing frozen assets.

President Clinton's waiver ultimately led to the enactment of the 2000 legislation which permitted Anderson, Sutherland, and the others to collect their judgments. Like many other laws, the 2000 legislation is not perfect and was the product of various compromises and policy considerations. For example, as noted previously, the legislation covers only certain enumerated cases against Iran (and a specific case against Cuba). Congress and the Administration decided to cover at that point only cases that had

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reached judgment by July 20, 2000 and an additional several cases that are identified in the statute by the date they were filed. In all, thirteen cases against Iran were covered by the 2000 legislation. The result of this decision was that a few other cases that were actually filed before the 2000 law was enacted and a couple of dozen filed since currently have no way by which the plaintiffs in those cases can collect their judgments against Iran.

Another important policy decision made by Congress and the President in enacting the 2000 law was the provision regarding the collection of compensatory versus punitive damages. Congress determined that the plaintiffs in the thirteen cases covered by the legislation could collect 100% of their compensatory damages award. However, as for punitive damages, Congress and the Clinton Administration did not want to cover them, but they did want to encourage plaintiffs who had obtained such judgments to drop their claims. The result was an incentive clause for plaintiffs who had received punitive damages awards. The legislation provided

that if the plaintiffs with punitive damage awards would waive those judgments, they would receive an additional payment of ten percent of their compensatory damages award. Thus, in the case of Terry Anderson's greater-than \$41 million compensatory damages award, waiving the right to pursue the \$300 million in punitive damages he had won would yield to Anderson a payment of an additional \$4.1 million.

The other major policy decision covered by the 2000 legislation was the manner by which the judgments were paid. As noted above, the funds paid to the families in each of the thirteen cases against Iran are tied to frozen Iranian assets. In fact, the payments actually were made by the U.S. Treasury under a mechanism by which the funds were credited against frozen Iranian assets held by the United States. Under this mechanism, the United States essentially acts like an insurance company and has now "bought" the judgments from each of these families. It is up to the President, at his discretion as the Chief Executive in charge of foreign policy, to decide if and when to draw down from the foreign assets fund. Alternatively, he can decide to wait until a day in the future when the United States and Iran sit down and attempt to resolve outstanding issues between the two countries, with these cases being among those issues.

In addition to the Anderson case, our firm also handled cases covered under the 2000 legislation by Thomas Sutherland, Robert Polhill, Michael Wagner, and their families. Polhill was kidnapped from Beirut University College in early 1987 and held hostage for more than three years. Wagner was killed in the 1984 Embassy Annex bombing in Beirut. Each case went to trial, and the plaintiffs received multimillion dollar judgments which they collected under the 2000 legislation.

Today approximately four dozen civil lawsuits are pending in federal court in Washington for which there are currently no mechanisms in place to fund the payment of any judgments that may be obtained. Most of these cases are against Iran, but some are against Iraq, Libya, and Sudan. Congress recognized

the problem of collecting on these judgments, and in late 2001, it asked the President to develop a plan that would fairly fund the outstanding awards. Although draft plans have been circulated within the federal government, the Bush Administration has yet to propose a funding solution.

Not everyone is happy with the 2000 legislation and with the concept of making foreign state sponsors of terrorism pay such judgments. For example, *The Washington Post* has editorially criticized the concept as an intrusion on the President's foreign policy prerogatives. One proposal for the remaining cases is to establish a payment system like the Special Master process Congress established after September 11 to pay victims of those terrorist attacks. The victim of

terrorism clients our firm represents have uniformly rejected that proposal. Our clients have chosen to pursue litigation against entities like Iran largely out of a desire for accountability. The plaintiffs want the evidence against Iran to see the light of day and to be assessed by a federal judge with all the formality that a federal court trial entails. In our experience, the process of going through such a proceeding with the court has proved uniformly cathartic for the families.

Many of the forces behind the passage of the 1996 Act hoped to create a legal tool which would eventually force foreign states into addressing grievances by way of the rule of law, and not by assassination and hostage taking. Testimonial evidence submitted in some of these cases reveals that Iran has reacted to all

these judgments and lawsuits by enacting its own law allowing Iranian citizens to sue the United States for acts of American state-sponsored terrorism. Although at first blush that might seem humorous, it demonstrates a positive response in that Iran has reacted to the rule of law by developing its own laws. Surely that is more positive than more assassinations and suicide bombings.

It has been a long journey from Iran's terrorism of the early 1980s to where we are today. It is likely that not one of the hostages held by Hizbollah in a dungeon all those years ago would have believed that one day they would be able to enjoy some level of material comfort at Iran's expense. However, there remains a long way to go to get other judgments against Iran and other terrorist states paid. ■