



September 13, 2006

COURT DECLINES TO ALLOW TERRORISM VICTIMS TO SUE FOR PUNITIVE DAMAGES

(Jacobsen v. Oliver)

The U.S. District Court for the District of Columbia ruled this week that victims of Middle East terrorism are not permitted to seek punitive damages against MOIS (the Iranian foreign intelligence agency) based on MOIS's active involvement in Hezbollah's terrorist activities.

The decision was a setback for WLF, which filed a brief in the case, *Jacobsen v. Oliver*, urging the court to rule that MOIS could be forced to pay punitive damages to victims of its terror. WLF argued that allowing punitive damage awards against government sponsors of terrorism will make it less likely that governments will be willing to provide such support in the future. WLF filed its brief in conjunction with the Jewish Institute for National Security Affairs (JINSA).

The case involved David Jacobsen, an American who was kidnapped by the terrorist organization Hezbollah and held hostage for several years in the 1980s in Lebanon. Upon his return to this country, Jacobsen filed a tort action to recover damages for his mistreatment. MOIS provided significant financial and logistical assistance to Hezbollah and thus was a logical target of Jacobsen's suit.

The issue before the district court was whether MOIS, as an arm of the government of Iran, was entitled to sovereign immunity under the Foreign Sovereign Immunities Act (FSIA). WLF's brief argued that MOIS was not entitled to immunity from suit to the extent that it engaged in the kidnapping and torture of Americans.

The case turned on the meaning of a 1996 law, the Flatow Amendment, which addresses the liability of an "official, employee, or agent of a foreign state designated as a state sponsor of terrorism." Although Iran has been designated as a state sponsor of terrorism, the FSIA imposes strict limits on the ability of an individual to seek damages in federal court against a foreign state. WLF's brief argued that MOIS is not synonymous with the Islamic Republic of Iran; rather, WLF argued, MOIS should be deemed an "agent or instrumentality" of Iran within the meaning of the Flatow Amendment. If MOIS were so deemed, then it could be held liable for punitive damage awards.

The district court held that MOIS should be deemed to be an integral part of the Iranian government and thus immune from punitive damage awards. The court held that an organization generally should be deemed a mere "agency or instrumentality" of a foreign government only when it performs a commercial function rather than a function (such as intelligence and covert military operations) normally associated with government activity. The court rejected WLF's argument that providing support for terrorists around the world is not a legitimate, core government function and thus does not warrant special protection from damage awards.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a significant portion of its resources to participating in legal proceedings designed to strengthen national security and to protect American citizens from terrorist activity. Joel J. Sprayregen and Jared M. Wayne, attorneys in Chicago, assisted WLF in the preparation of its brief.

* * *

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.