

Law must trump politics

Leslye Knox's husband Aaron was killed when a bomb exploded at a bar mitzvah in the town of Hadera, Israel. Yishai Ungar's parents, Yaron and Efrat, were killed in a drive-by shooting on an Israeli highway on the way to a family wedding. The two American citizens share more than celebrations-turned-tragic. They share a commitment to using the law to repair their lives.

Each won a large award after suing the Palestinian Authority (PA) under U.S. anti-terror legislation -- \$175-million in the Knox case and \$116-million in Ungar. In both judgments, individuals under the command of the late Palestinian president Yasser Arafat were identified as the perpetrators of the attacks, and the PA was held responsible for sponsoring them.

As a result of creative maneuvers by the families' lawyers, attempts to collect the judgments have met with some success. They froze several U.S. bank accounts belonging to the PA's parent body, the Palestinian Liberation Organization (PLO), and one holding pension funds for PA civil servants. They also brought enforcement proceedings in Israeli courts, seeking to legally divert Palestinian excise taxes that Israel collects and remits to the PA. At one point, the plaintiff families managed to lien the Manhattan building used by the PLO as its United Nations mission headquarters. A New York court eventually vacated the lien, but the message was sent that the assets of those who sponsor terror remain at risk.

Knox and Ungar now face another legal challenge. The PA, with new lawyers in tow, has applied to a federal court in New York to quash the judgments, stating they will vigorously defend cases they had previously ignored. But the PA's claim that the lawsuits were previously unanswered is patently false. The PA was represented all along by no less a legal figure than Ramsay Clark, the Carter Administration's attorney general.

Clark recently told the court that in 2003 he visited Arafat personally and was instructed to ignore the litigation. Nevertheless, for years Clark put up a strenuous defence, arguing all the way to the U.S. Supreme Court that the PA has sovereign state status and deserves immunity in other states' courts. Clark lost that argument, and now seeks to avoid the consequences by pursuing a different tact.

Palestinian Prime Minister Salaam Fayyad put forward the new strategy when he labelled the judgments an obstacle to continued Palestinian participation in the peace process. That view was endorsed by PA President Mahmoud Ab-bas, who wrote directly to Secretary of State Condoleezza Rice calling for U.S. government intervention.

This past month, the PA was in court arguing that the judgments could potentially bankrupt it and interfere with American foreign policy. With that in mind, the federal court issued a request for a governmental "statement of interest" in order to determine whether any "separation of powers" issue -- where the judicial branch backs off a case for fear of treading on the executive branch's turf -- is truly at stake. The State Department has been contemplating its response and, given the amount of aid to the PA it routes through U.S. financial institutions, is reported to be leaning toward the Palestinians.

This would set a precedent that threatens judgments in numerous U.S. cases against foreign entities, including sponsors of terror, state practitioners of torture and human rights abusers of all shapes and sizes. The Knox and Ungar lawyers met last week with the U.S. Department of Justice, trying to get the one branch of government that worries about civil rights to weigh in on the side of the rule of law for U.S. citizens killed abroad.

The suits against the PA now boil down to a contest between the foreign policy interests of the United States and the civil rights of Americans. As a consequence, the State Department's Middle East desk is facing off against the Justice Department's litigation policy branch.

For the sake of terror victims everywhere, here's hoping the court comes down on the side of law over politics, or Justice over State, and that it helps ease the plaintiffs' enduring losses.

-Ed Morgan is a law professor at the University of Toronto. He testified as the plaintiff's expert on the international legal status of the PA in the Ungar case.

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Ahmed Hussen
Director of Communications
Canadian International Peace Project
1027 Finch Avenue West
P.O. Box 30088
Toronto, Ontario
M3J 3L6
Canada
E-mail: cipp@canadianipp.org
Website: www.canadianipp.org

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