

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE
& DEMOCRACY
NEWS

IN THIS ISSUE: FOCUS ON WAR & THE CIVIL JUSTICE SYSTEM

Dear Friend,

With political attacks on trial lawyers and the civil justice system reaching new heights this election year, CJ&D is excited to say that we have embarked on several new programs aimed at mitigating the damage caused by these assaults.

Under the auspices of the Center for Justice & Democracy, a new group of leading academics with expertise in one or more issues related to the U.S. civil justice system has come together, called the "Civil Justice Resource Group" (CJRG). The CJRG is composed of more than twenty scholars from law and graduate schools around the country who formed to respond to the widespread disinformation campaign by critics of the civil justice system.

Several members of the group specialize in conducting empirical studies of the actual operation and effects of the civil justice system. The CJRG intends to publish briefing books and other materials to help inform the debate over these issues.

The CJRG has some great ideas and plans for the future. Please stay tuned! To learn more, contact CJ&D's Legal Director Geoff Boehm.

Sincerely,

Joanne Doroshov
Executive Director

Compensating Victims of 9/11

In September 2001, the U.S. Congress acted quickly to try to assist the victims most directly hurt by the events of September 11. This was after moving even more quickly to try to immunize airlines and others from any liability connected to the terrorist attacks.

So as a result of intense lobbying by trial lawyers and other victim advocates, Congress included within the Air Transportation Safety and System Stabilization Act a section known as the "September 11 Victim Compensation Fund of 2001," which set up an unprecedented federal entitlement pro-

gram to provide compensation for victims of the attack.

Largely with the help of Trial Lawyers Care, a pro bono project established by the Association of Trial Lawyers of America in response to the September 11 tragedy, the vast majority of victims filed claims with the Fund. According to the U.S. Department of Justice, the Fund received over 7,300 death claims and an additional 4,419 personal injury claims before its December 22, 2003 deadline.

As of June 28, 2004, the Fund had issued 5,553 award

letters to the families of deceased victims, the average award totaling over \$2 million after collateral offsets, including life insurance benefits, pension funds and death benefit programs.

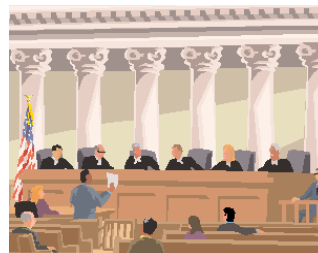
The Fund had also issued awards for 2,674 personal injury claims, almost all from injuries sustained at the World Trade Center cleanup sites, with awards ranging from \$500 to over \$8.6 million after offsets. All told, the Fund will end up paying nearly \$7 billion. But the fund hasn't taken care of everybody who suffered injury in
(continued on page 2)

U.S. Courts Lead Fight for Human Rights

When it comes to helping victims of human rights abuses, the United States has a civil justice system like no other. Unlike other nations, our laws and our courts permit civil remedies against human rights violators -- including individuals, corporations and foreign governments -- allowing victims to obtain some sort of redress and monetary compensation and to hold abusers financially accountable in court.

Of all the U.S. statutes that provide civil remedies against

a foreign perpetrator, the Alien Tort Claims Act ("ATCA") is perhaps the most progressive and pro-human rights law in American jurisprudence.



Dating back more than 200 years, the ATCA allows peo-

ple from countries outside the United States to use American federal courts to sue foreign individuals and multinational corporations that commit human rights violations abroad, provided the wrongdoing violates customary international law or a U.S. treaty. No other country in the world has a statute like this.

At the end of June 2004, the U.S. Supreme Court issued the first substantive decision on the law in the case of *Sosa*

(continued on page 3)

Compensating Victims of 9/11 *continued...*

connection with 9/11. More than 1,700 police officers and firefighters are suing New York City over illnesses suffered from recovery and cleanup efforts at Ground Zero or the Fresh Kills landfill. Sickesses named in the lawsuits include cancer, asthma, airway disorders and other lung problems.

Take the case of Detective John Walcott, 39, who was diagnosed with AML -- a cancer usually caused by exposure to chemicals and radiation -- after sifting through the World Trade Center rubble. In 2004 alone, he has undergone bone marrow transplants and a series of chemotherapy treatments, often waking up in the middle of the night with blood coming out of his eyes. "I've never been sick a day in my life, except for a sore throat or a common cold," Walcott told the *New York Daily News*. "I've had friends of mine who were stationed with me [at the landfill] visit me in the hospital and panic, asking me, 'Am I next?'"

While most victims of the terrorist attacks have sought compensation from the Fund, others are looking for answers and accountability in court, illustrating that often, Americans rely on the civil jury system for reasons other than monetary compensation. Jury verdicts are sometimes the only means available for obtaining personal justice, and it is often only through sustained litigation in court that important facts are discovered - facts that could not have been obtained publicly through other means.

Nearly 200 separate negligence cases have also been filed by victims' families against United and American Airlines, airport security-checkpoint firms and building managers, among others, in Manhattan federal court. Pre-trial discovery by one firm has already revealed that the box cutters the hijackers carried were on the airlines' pre-September 11 list of banned items that airport screeners were supposed to confiscate.



Beverly Eckert, whose husband Sean was killed at the World Trade Center after becoming trapped on the 105th floor of the south tower, is one of those seeking justice from the tort system.

"I want to know what went so wrong with our intelligence and security systems that a band of religious fanatics was able to turn four U.S. passenger jets into an enemy force, attack our cities and kill 3,000 civilians with terrifying ease," she explained in a December 2003 *USA Today* column. "I want to know why two 110-story skyscrapers collapsed in less than two hours and why escape and rescue options were so limited. I am suing because unlike other investigative avenues, including congressional hearings and the 9/11 commission, my lawsuit requires all testimony be given under oath and fully uses powers to compel evidence.... Nor do I have any illusions about winning money in my suit," she added. "What I do know is I owe it to my husband, whose death I believe could have been

avoided, to see that all of those responsible are held accountable. If we don't get answers to what went wrong, there will be a next time. And instead of 3,000 dead, it will be 10,000. What will Congress do then?"

Victims are also using civil litigation to try to bankrupt terrorist entities allegedly responsible for the attacks. For example, over 6,000 victims' family members have filed a \$1 trillion federal lawsuit against more than 200 defendants, including Saudi royal princes, Saudi banks, Islamic charities and the government of Sudan, for bankrolling al Qaeda, the Taliban and Osama bin Laden.

"We will move terrorist financing schemes out of the shadows and into the light of day," said Thomas Burnett Sr., whose son was killed on United flight 93. "We will expose for the world the shady underbelly behind the atrocities of 9/11, leaving those with evil intentions nowhere to hide and no place to escape accountability."

Unfortunately, even if victims prevail against terrorists and their supporters in court, collecting judgments may prove difficult. The outcome of a recent ruling against Iraq for the September 11 attacks is a case in point. In May 2003, a New York federal judge ordered Iraq to pay \$64 million to the families of two businessmen killed at the World Trade Center.

Though the victims hoped to collect the judgment from Iraq assets frozen in the United States, George W. Bush had issued an executive order

reserving all assets for postwar rebuilding of Iraq, a decision that did not sit well with U.S. District Court Judge Harold Baer, who had to deny the family members any recovery.

"The government contends that these funds, which might otherwise be used for compensation, are needed to rebuild Iraq," wrote Judge Baer. "That need is clear, nonetheless one wonders whether American families who lost loved ones as a result of terrorism here and abroad ought not be compensated first."



CENTER FOR JUSTICE
& DEMOCRACY

CENTER FOR JUSTICE & DEMOCRACY

80 Broad Street
17th Floor
New York, NY 10004
Phone: 212.267.2801
Fax: 212.764.4298
E-mail: centerjd@centerjd.org
Web: <http://centerjd.org>

IMPACT
Editor: James Freedland

Contributors:
Emily Gottlieb
Joanne Doroshow
Geoff Boehm

© Copyright 2004 Center for Justice & Democracy. All rights reserved.

U.S. Courts Lead Fight for Human Rights *continued...*

v. Alvarez-Machain. The court limited the law's scope somewhat but upheld its fundamental use in cases involving significant human rights violations.

At least two post 9/11 pending cases have invoked the ATCA, one involving Guantanamo Bay detainees who say that their imprisonment violates international law; and a suit on behalf of former prisoners at Iraq's Abu Ghraib prison.

As Michael Ratner, an attorney with the Center for Constitutional Rights and one of the leading human rights lawyers in the United States, explains, "In addition to any money that can be collected, [ATCA cases] are important to the victims and their families. Plaintiffs are allowed to tell their stories to a court, can often confront their abusers and create an official record of their persecutions. This in turn could lead to a criminal prosecution."

Filing civil suits can also empower victims by giving them a means to fight back and help them heal, Ratner

adds, and as a result of civil lawsuits, human rights violators may even be barred from the United States. Equally important, according to Ratner, is the role of civil suits in announcing legal norms, "courts declaring that torture and other abuses are violations of international law. These decisions have their effect internationally."



The ATCA permits victims to sue for acts of torture, crimes against humanity, genocide, war crimes, disappearances, summary execution, arbitrary detention, forced labor and cruel, inhuman and degrading treatment. While the most obvious defendant in such cases is the actual perpetrator, others can be held liable as well. Those who order or authorize the violations or those with command responsibility, including individuals

with authority over the actions of their troops and subordinates, who knew about the violations, can be sued.

Many of these cases have been successful. For example, in July 1994, a federal judge entered a \$41 million default judgment against Prosper Avril, the former dictator-President of Haiti, who directed soldiers to imprison, beat and torture six political opponents of the Haitian military regime in 1989 and 1990. Nearly 10,000 Philippine citizens or family members of those who were tortured, summarily executed or disappeared during Ferdinand Marcos' martial law regime between 1972 and 1986 won a class action lawsuit against his estate, which, after a series of trials, settled in April 1999 for \$150 million. More recently, in September 2000, a jury awarded 22 Muslim citizens of Bosnia-Herzegovina \$4.5 billion in compensatory and punitive damages for gross human rights abuses, including murder, torture, forced impregnation and prostitution, rape and execution committed by individuals under the command and control of former Bosnian Serb leader Radovan Karadzic.

In addition, some cases have allowed suits against groups involved in human rights violations. Individuals who commit genocide, crimes against humanity and war crimes can also be sued even if they are not acting with the authority of the state.

Corporations involved in human rights abuses committed in their overseas operations can also be sued if they're headquartered or doing business in the United States. A case is pending in California court against Unocal, alleging that the oil company was complicit in forced labor, forced relocation and torture, carried out by the Burmese military in the building of a natural gas pipeline in Burma. And Royal Dutch-Shell is facing a civil lawsuit brought by four Nigerians, who claim that the companies instigated and orchestrated the imprisonment, torture and murder of local Nigerians who protested the corporations' oil drilling on their lands.

(For more cases brought under the ATCA, see CJ&D's study, *Restoring Shattered Lives: A Primer on War, Terrorism and The U.S. Civil Justice System*.)

Sidebar: American POW Claims Against Iraq

Testifying before the Senate Armed Services committee in the wake of the Abu Ghraib prison scandal, Defense Secretary Donald Rumsfeld apologized to Iraqis abused by U.S. troops, saying the Pentagon might financially compensate prisoners who were harmed. "I'm seeking a way to provide appropriate compensation to those detainees who suffered such grievous and brutal abuse and cruelty at the

hands of a few members of the United States armed forces," he said, adding, "It's the right thing to do."

Yet when it comes to compensating American POWs tortured in Iraq, the Administration has been far from sympathetic. On June 4, 2004, at the request of the Justice Department, the U.S. Court of Appeals threw out a \$959 million judgment against Iraq

awarded to 17 Americans captured, tortured and starved during the Persian Gulf War. The POWs and their families had filed suit in April 2002 under the Foreign Sovereign Immunities Act, a federal law that allows foreign nations to be sued here when they engage in acts of terrorism against American citizens anywhere in the world.

"This is difficult to take," said

retired Air Force Col. David Eberly, who was beaten and starved by Iraqi soldiers while being held prisoner for more than 40 days. "We served without question and withstood the worst the Iraqi torturers handed out. ... I am also concerned for those who serve our country in the future, as future torturers may now believe that the United States will not stand behind its servicemen and women."

U.S. Law & International Justice

Most often, cases involving terrorism, war crimes or serious human rights violations rely on one or more of four U.S. laws that specifically allow individuals to obtain a civil remedy against a foreign perpetrator: the Alien Tort Claims Act (ATCA), the Torture Victim Protection Act of 1991 (TVPA), the Anti-Terrorism Act of 1992 and the Foreign Sovereign Immunities Act (FSIA).



Alien Tort Claims Act (ATCA)

This law allows people from countries outside the United States to use American federal courts to sue foreign individuals and multinational corporations that commit human rights violations abroad, provided the wrongdoing violates customary international law or a U.S. treaty. No other country in the world has a statute like this.

Torture Victim Protection Act of 1991 (TVPA)

Enacted in 1992 as an amendment to the ATCA, the TVPA was created prima-

riarily to allow U.S. victims of certain human rights abuses abroad to sue in U.S. courts, just as people from other countries are permitted to do under the ATCA. People from other countries can also use the TVPA.

The Anti-Terrorism Act of 1992

This statute allows any U.S. citizen injured by an act of international terrorism to seek triple damages in federal court against the organization and/or individual(s) responsible.

The Foreign Sovereign Immunities Act (FSIA)

As a general rule, U.S. law rec-

ognizes the doctrine of "sovereign immunity," which prevents other countries from being sued in U.S. courts.



However, Congress has carved out some limited exceptions to sovereign immunity in the FSIA, including allowing suits against foreign nations when they engage in acts of terrorism against American citizens anywhere in the world.

SUPPORT CJ&D— BECOME A MEMBER!

I would like to become a:

Subscriber (\$100) and receive: CJ&D's quarterly newsletter, *Impact*, breakthrough MYTHBUSTERS! (fact sheets); and free topical "Alerts" containing vital information.

Associate (currently \$500, half the usual rate of \$1,000!) and receive: all Subscriber benefits, plus free copies of CJ&D's ground-breaking bi-monthly White Papers on critical subjects and all of CJ&D's major studies; unlimited access to the CJ&D library, which is fully accessible on an exclusive password-protected section of CJ&D's Web site.

Fellow (\$5,000) and receive: all Associate benefits, plus exclusive personal correspondence from CJ&D containing inside information and analyses of trends and topics.

Leadership Council member: Please contact Joanne Doroshov for more details

Thank You!

*Your membership contribution is deductible to the extent allowable by law.

Below is a credit card number to which I may be billed:

Exp. date _____

Signature _____

Name _____

Address _____

Phone _____

Email _____



Center for Justice & Democracy
80 Broad Street, 17th Floor
New York, NY 10004
Phone: 212.267.2801
Fax: 212.764.4298
Email: centerjd@centerjd.org
Web: http://centerjd.org