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Terror Watch: Terror Tort Reform

By *Michael Isikoff and Mark Hosenball*
Newsweek

The Bush administration, alarmed about a rash of lawsuits over international acts of terrorism, is pushing a controversial plan that would set up a new federally funded "compensation fund" for the victims--with sharp limits on how much they can recover. The plan, the product of months of interagency debate within the administration, was submitted without fanfare to the Senate Foreign Relations Committee last month and public hearings are now scheduled for July 17. But the proposed bill--dubbed the Benefits for Victims of International Terrorism Act--has stirred up a hornet's nest of opposition from plaintiffs' lawyers and some victims' families. They argue the proposal is really designed to torpedo lawsuits aimed at holding foreign governments and businesses responsible for terrorist acts that kill Americans.

"What this will do is undermine the actions of victims and their families to hold accountable the terrorists and their financiers," says Jack Cordray, a South Carolina lawyer who is representing September 11 victims in a lawsuit against members of the Saudi royal family and businesses who allegedly helped finance the attacks. "They're trying to lure victims into this fund and take away their right to sue."

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But administration officials argue they are trying to put some brakes--and fairness--into what has become a virtual runaway train of litigation in recent years over terrorist acts. Ever since Congress amended federal laws in 1996 to allow U.S. citizens to sue foreign governments for facilitating terrorist acts, more than 50 such lawsuits have been filed in U.S. courts--over everything from the 1979 Iranian hostage crisis to the 1993 bombing of a U.S. Marine barracks in Lebanon to the 1998 bombings of U.S. embassies in Africa.

But, as is often the case with the U.S. legal system, the cases have proceeded with highly uneven results. Some have resulted in astronomical multimillion-dollar jury awards for the victims--with lucrative contingency fees for the plaintiff's lawyers who handled them. But others have been tossed out on arcane legal grounds or are winding their way through the courts at a snail's pace.

At first, the U.S. lawsuits targeted so-called "blocked assets" of rogue regimes such as Iraq, Iran or Cuba--funds inside the United States that had been frozen by U.S. Treasury officials. But those assets are limited. What gave the issue special urgency inside the U.S. government was passage of an amendment three years ago, sponsored by Sen. Frank Lautenberg of New Jersey and former Florida senator Connie Mack. That provision was aimed at assisting lawsuits filed by American victims of Iranian-sponsored terrorism, principally against Americans injured or killed while visiting Israel. The amendment required the U.S. Treasury to pay the jury awards--apparently under the theory that the money can eventually be recovered by the U.S. government from Iran. This has resulted in payouts of \$386 million from the Treasury to the families of 14 U.S. victims, according to figures provided by an administration official to NEWSWEEK.

The idea that the U.S. government was going to have to start footing a potentially unlimited bill for acts of foreign terrorism alarmed officials at Treasury and State and started the interagency debate that has produced the new bill. "What we're trying to do is put some fairness into the process," says one administration official involved in drafting the proposal. Under the plan, any victim of what the U.S. government designates an act of international terrorism would be eligible to receive a payment of up to \$262,000. This figure, officials say, is derived from a federal program that compensates the families of police officers and firefighters killed in the line of duty.

The plan is in part patterned after a special September 11 fund created by Congress after the terror attack that is designed to compensate beneficiaries through a system that evaluates, among other factors, the potential future earning power of each individual victim. But the new proposal, officials say, is designed to rectify what many have seen as a major pitfall with the September 11 plan: the families of some victims, principally high-income Wall Street executives, were being granted huge multimillion-dollar awards while the families of others, such as low-earning menial workers, were receiving substantially smaller amounts.

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In a letter to Congress accompanying the proposal, Deputy Secretary of State Richard Armitage wrote the claims process under the new plan would be "quick, streamlined and simple, in order to help victims' families in their time of need." It would also preserve "the president's ability to conduct foreign policy," he wrote, by allowing the administration to use "blocked assets" to pressure foreign governments--instead of being depleted with payouts to the victims of terrorism.

But plaintiffs' lawyers like Cordray charge the proposed \$262,000 payout is a mere pittance compared to what can be recovered from private litigation--and, in any cases, robs victims of the chances to "punish" the perpetrators through the court system.

In any case, the proposal won't apply to September 11 families because the new proposal forbids them from double-dipping: Since they are already covered by special September 11 fund, they wouldn't be able to also claim payouts under the proposed new fund. And even under the new plan, families can choose to forgo payouts in favor of litigation--even if they have to wait years, if not decades, to collect.

THE KUALA LUMPUR SUMMIT REDUX

Was master terrorist Khalid Shaikh Mohammed at an Al Qaeda "planning" summit in Kuala Lumpur, Malaysia, in January 2000 that was being secretly monitored by the Malaysian secret services--all under the watchful eyes of CIA?

That surprising claim was made today by Rohan Gunaratna, a widely respected academic expert on Al Qaeda who claims to have had access to top-secret U.S. intelligence "debriefs" of captured Al Qaeda terrorists. Gunaratna was an initial witness at a public hearing conducted by the National Commission on Terrorist Attacks Upon the United States.

Gunaratna, who said he has specifically reviewed transcripts of the interrogations of Khalid Shaikh Mohammed since his capture in Pakistan last March, testified that Mohammed actually "chaired" the meeting of 12 Al Qaeda principals in which the September 11 plot and other future Al Qaeda attacks were discussed.

But agency spokesman Bill Harlow flatly refuted the academic's testimony today, saying the agency can now say for certain that the alleged 9-11 mastermind wasn't present. "He's totally incorrect," said Harlow about Gunaratna. "He got it wrong."

The issue is far from academic. The CIA has previously acknowledged that it had asked the Malaysian "Special Branch" to monitor the Kuala Lumpur summit and that the agency even received secret photographs of the Al Qaeda

terrorists meeting there. (Immediately after the meeting, two of those present, 9-11 hijackers Khalid Al-Mihdhar and Nawaf Al Hazmi, flew from Kuala Lumpur to Bangkok and then onto Los Angeles. That information was soon known to the CIA but never passed along to other U.S. law-enforcement and border agencies that could have placed the two men on a terrorist "watch list" and tracked their activities inside the United States.)

If true, Gunaratna's claims about Mohammed's presence would make the intelligence failure of the CIA even greater. It would mean the agency literally watched as the 9-11 scheme was hatched--and had photographs of the attack's mastermind, Khalid Shaikh Mohammed, doing the plotting.

But Harlow said Gunaratna may have simply been confused because one of those who was present, a high ranking Al Qaeda operative named Tawfiq bin Attash, had the nickname of "Khalled." And the hijacker, Al-Mihdhar, had the first name Khalid. "Let's hope the rest of the commission's witnesses do better," said Harlow.

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