Testimony of

Mr. Nathan Lewin

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My name is Nathan Lewin. I am a lawyer in private practice in Washington, D.C., in a family law firm called Lewin & Lewin LLP that I operate with my daughter, Alyza Lewin. I was a prosecutor with the Department of Justice and practice white-collar criminal defense law and appellate litigation. I have represented former President Richard Nixon and Attorney General Ed Meese, have argued 27 cases in the Supreme Court of the United States, and have taught at Harvard, University of Chicago, Georgetown, Columbia and George Washington University Law Schools.

I am gratified to have received your invitation to testify on "An Assessment of the Tools Needed to Fight the Financing of Terrorism" because I believe I have discovered the cheapest means, from the perspective of the American taxpayer, to fight the financing of terrorism from sources within the United States. The principal tool for this battle is, I believe, America's private litigators - lawyers who are ready to bring private lawsuits against private organizations and individuals who provide funds to organizations that engage in terrorist acts abroad or in the United States.

I speak from personal experience. Sometime in 1997, when I was visiting the State of Israel, as I frequently do, I was introduced to Joyce and Stanley Boim, the parents of David Boim, a young man who was killed by Hamas terrorists in May 1996 when he was only 17 years old. David, who was born in the United States to American parents, was standing at a bus stop near the school he attended when a car drove past and shot randomly at passengers boarding a bus and others standing nearby.

The killers were two members of Hamas, the organization that immediately took credit for the attack. One of the killers went on to be a suicide bomber in September 1997 in the heart of Jerusalem, when he killed 7 others (including a young girl who was an American citizen) and wounded 192 (including several young American students). The second - the driver of the car - is named Amjad Hinawi. He confessed when he was finally brought to trial in a court of the Palestinian Authority in early 1997. An American State Department representative, Mr. Abdelnour Zaibeck, witnessed the confession. Hinawi received a slap on the wrist from the Palestinian court. Although he was found guilty and sentenced to 10 years of prison at hard labor, he has been seen walking around free in Palestinian territory. I testified about this outrage and the inexplicable failure of the Department of Justice to indict Hinawi and seek his extradition before Senator Specter on March 25, 1999. Absolutely no progress has been made since that time. There is no reason in the world why a confessed murderer of an American student shot in cold blood while waiting at a bus stop has not been criminally charged by American authorities and brought to trial in an American court.

The Boims asked me whether they had any remedy at all under American law. I did what too few lawyers do today and looked at the books. I found that in 1991 and 1992 Congress had passed anti-terrorism laws, including what is now 18 U.S.C. § 2333, that gave American-citizen victims of such terror anywhere in the world a civil remedy, with treble damages and attorneys' fees, against those who commit murder or assault.

Obviously, Hinawi has no funds that can be reached for a judgment, should the Boims involve that statute. And his confederate killed himself and 7 others in a later suicide bombing. Against whom can such a statute be used?

Over initial objections from my then-partners, I drafted and filed a lawsuit against those who enabled the perpetrators to kill David Boim - the organizations in the United States that collected funds and provided other support for Hamas in the years preceding May 1996. I was challenged by partners, friends and other lawyers, who wanted to know why I was suing the leading Muslim charity in the United States - the Holy Land Foundation for Relief and Development - and others that were engaged in purportedly "charitable" activities in the Middle East. I responded that the defendants in my case - none of whom are foreign governments or government agencies - knew that they were also funding violence by Hamas directed against civilians.

I sued in federal district court in Chicago in the Northern District of Illinois because the United States had seized $1.4 million in a civil forfeiture action based on allegations of money-laundering on behalf of Hamas. I hoped that the Boims - who are victims of Hamas terrorism - would be able to reach those funds. Our complaint was filed on May 12, 2000. On January 11, 2001, District Judge George Lindberg denied motions by the Holy Land Foundation and other defendants to dismiss the complaint. I agreed to the defendants' request for an interlocutory appeal to the Court of Appeals for the Seventh Circuit because I believed it important that the litigation's deterrence to contributions for terrorism receive great prominence.

Briefs were filed and the case was set to be argued on September 25, 2001. And then came September 11. The judges on the Court of Appeals, realizing the importance of the issues they were being asked to decide, asked the Department of Justice to file a friend-of-the-court brief. We argued the case on September 25, and in November 2001, the Department of Justice filed its brief supporting my argument that any organization that contributes to a terrorist organization with knowledge that it engages in terrorism is an aider-and-abettor of the terrorism and liable for damages. The Court of Appeals accepted that argument in a landmark decision issued on June 5, 2002. It is called Boim v. Quranic Literacy Institute and is reported at 291 F.3d 1000. The Holy Land Foundation did not seek Supreme Court review, and we are now engaged in the discovery process.

We are fortunate to have the volunteer assistance of the firm of Wildman Harold Allen & Dixon of Chicago - and specifically Stephen Landes and Richard Hoffman of that firm - in this time-intensive discovery stage. If not, we would not be able to continue with this exceedingly important lawsuit. And this brings me to my recommendations for legislative amendments that are essential to make this deterrent to the funding of terrorism work.

First, although 18 U.S.C. § 2333 provides for very substantial damage awards - treble damages and attorneys' fees - it does nothing to enable lawyers to pursue the litigation prior to a final judgment. I, and the firms I have been with since I began this project, have invested approximately one million dollars of attorneys' time in this case. Although $1.4 million of seized funds is sitting in the Clerk's office in the federal court in Chicago, we have received not one penny for the heretofore successful prosecution of this action. The law should provide that if a plaintiff is successful in defeating a motion to dismiss, he automatically recovers attorneys' fees and out-of-pocket expenses from the defendants. That will enable private attorneys general - such as I am in this case - to continue to prosecute these cases to a successful conclusion. Otherwise, well-financed defendants can exhaust a plaintiff's lawyer with all the preliminary skirmishes that have marked this case.

Second, funds that have been seized by the United States from defendants in these cases should

be made available for the payment of plaintiffs' attorneys' fees whenever the plaintiffs have prevailed at the pretrial stages. I felt vindicated when, on December 4, 2001, President Bush, Attorney General Ashcroft and Treasury Secretary O'Neill held a joint news conference to announce that the United States Government was seizing the assets of the Holy Land Foundation. President Bush stated, "Money raised by the Holy Land Foundation is used by Hamas to support schools and indoctrinate children to grow up into suicide bombers. Money raised by the Holy Land Foundation is also used by Hamas to recruit suicide bombers and to support their families. . . . [T]he terrorists benefit from the Holy Land Foundation." As a result of that action, approximately seven million dollars were seized and are now being held by the Office of Foreign Assets Control ("OFAC") of the United States Treasury.

That money is being used at a rapid rate to pay lawyers for the Holy Land Foundation for their work in challenging the seizure and in defending against the lawsuit I brought. If the litigation goes on long enough, all the seized funds will be spent paying for the Holy Land Foundation's lawyers. They have just lost their challenge to the seizure in a decision by a liberal Clinton-appointee judge in the District of Columbia. Judge Gladys Kessler held:

[T]he administrative record contains ample evidence that (1) HLF has had financial connections to Hamas since its creation in 1989; (2) HLF leaders have been actively involved in various meetings with Hamas leaders; (3) HLF funds Hamas-controlled charitable organizations; (4) HLF provides financial support to the orphans and families of Hamas martyrs and prisoners; (5) HLF's Jerusalem office acted on behalf of Hamas; and (6) FBI informants reliably reported that HLF funds Hamas.

The Holy Land Foundation lawyers are being paid top dollar from seized assets to make this unsuccessful defense. The lawyers for victims of terrorism are required to do their work pro bono publico. That is not justice.

Third, the law should more clearly authorize and require the federal government to cooperate with private attorneys general bringing lawsuits against the funders of terrorism. Prosecutors are loath to share their information with private attorneys, as we found in the initial stages of our lawsuit. Restrictions on statutes and court rules often prohibit such cooperation. The law should be amended to authorize and direct disclosure of grand jury and other investigative materials to private attorneys on application to a federal court. If, in a proceeding initiated on notice to the United States (but not to the defendant), a party establishes that evidence or other information in the possession of the United States would assist the prosecution of a civil lawsuit brought on behalf of American victims of terrorist acts, federal prosecutors should be directed and/or authorized to disclose such information to attorneys for the plaintiffs pursuant to a federal court order.

Fourth, the laws should be amended to provide explicitly the causes of action that we have established in our litigation. Section 2333 should state explicitly that any person or organization that knowingly provides material support or resources to an organization that engages in terrorist activities is an aider-and-abettor who is liable for the damages provided in the statute. Although we have not yet sued any individual contributor, it is important that the deterrent to funding terrorism be equally effective with regard to individuals as it now is with regard to charitable organizations.

Fifth, the statute of limitations - which is now four years - should be extended to 10 years. Funders of terrorism frequently operate in secrecy and their identity is not known until long after they have paid those who commit murder and other forms of violence. The current four-year statute provides only a short window of opportunity.

In addition, the limitations period should be extended for any new defendant whose involvement is first revealed in the course of discovery. If a plaintiff learns of the participation of an individual or entity that has successfully concealed its role, the plaintiff should have one year after that disclosure to add it as a party defendant.

There are, of course, other amendments that could usefully be made to existing law. These are just several that have occurred to me since your invitation to testify. I would, of course, be happy to work with the Committee staff to make the needed statutory improvements.

Thank you again for the opportunity to testify.