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INTRUDERS IN THE HOUSE OF SAUD, PART II

## A Nation Unto Himself

By JENNIFER SENIOR

If, in the future, the war on terrorism is fought in the orderly confines of the courtroom and not just in the caves of Tora Bora, then incriminating documents could become the equivalent of smart bombs. Ronald L. Motley, who has made a career of coaxing such documents from the shadows, made this clear in our very first phone conversation, during which he could barely contain his delight. "Have you heard of Mohammed Fakihi?" he demanded, in a drawl rich enough to fill a doughnut. "Investigated by the German police?"

Well, no --.

"That fella had a computer," he continued. "And do you know what I did with that computer?"

He allowed a capacious pause.

"I'll tell you what I did," he said. "I bought it."

As a trial lawyer, Motley thinks of terrorism not just as a form of war, but as a business -- a depraved, ruthlessly efficient business, whose financiers must be exposed and held accountable for their role in sowing harm. In the case of Sept. 11, Motley, like many in the American intelligence community, concluded that the 19 hijackers would never have been able to carry out their plans without generous Saudi assistance. Nineteen months ago, he filed a civil lawsuit in federal court in Washington charging that a wide variety of parties from the kingdom sponsored the attacks, either directly or indirectly, by making donations to institutions that they knew fostered terrorism. Among the case's 205 defendants are seven Saudi charities, including the largest in the Muslim world; three Saudi financial institutions, including one that is now state-run; dozens of prominent Saudi individuals; and perhaps most audaciously, several members of the royal family, for whom Motley has a rich assortment of epithets. Though Motley is not the only tort lawyer in the United States to have filed an international lawsuit in connection with Sept. 11, his case is by far the largest and most lavishly financed of its kind: he has already spent more than \$12 million, most of it his own money or his firm's, investigating the case. The families of 1,667 people who died that day, as well as 1,197 men and women who sustained injuries, have signed on.

With all due respect, I asked Motley, how did he, rather than the F.B.I. or the C.I.A, gain custody of Fakihi's computer?

"Well, think about it this way," he said. "If you had information -- a computer hard drive, a Mullah Omar document or whatever your currency might be -- would you necessarily want to give it to the F.B.I.? Why, you might wind up in Guantanamo Bay. Which is not a pleasant place to be, I understand."

Nor does it hurt, one imagines, that when it comes to procuring the hard drives of individuals with potentially valuable information, Motley is willing to pay a handsome fee. (Though in this case, the seller, who Motley said was on the lam, charged only \$4,000, on the condition that Motley's people also take his car off his hands.)

Motley built a successful legal career by winning quixotic lawsuits -- first against asbestos companies, which made him an extravagantly wealthy man, and then as a central player in the huge, 46-state case against Big Tobacco, at a time when going after cigarette manufacturers was a demonstrable route to bankruptcy. But whatever risks he took in suing multibillion-dollar corporations pale in comparison to this terrorism case. In trying to use domestic courts to redress the problem of global terror, Motley is potentially subverting, or at least opening to redefinition, the very notion of diplomacy. He and his clients are effectively acting as their own nation. This is naturally worrisome to international-relations professionals, who wonder whether profit-seeking trial lawyers have the legitimacy, expertise or proper motivations to be making foreign policy. "That's why we have a government," said Sean D. Murphy, who served as a

State Department lawyer from 1987 to 1998. "It's elected to make some of the hard calls about how to handle foreign countries."

That may be so. The problem, as Motley sees it, is that sometimes governments are not in the position to make those hard calls, whether it be for political or for commercial reasons. So instead, they make easy ones. They resort to gentle persuasion, and their pleas fall on deaf ears. "Since 1999," Motley said later, "officials at the highest levels of our government have tried repeatedly to warn the Saudis about terrorism funding. And what did they do? They ignored them."

He took another dramatic pause.

"Which is why our defendants," he concluded, "ought to be held accountable in an American court."

Unlike most of the litigation filed in the aftermath of Sept. 11, which involves a fairly traditional body of laws and assumes a predictable pattern (the victims' families suing the airlines suing the insurers), the sweeping antiterrorism case brought by Ron Motley relies on new and evolving legal terrain, and its key defendants live in a Muslim monarchy halfway around the world. The United States also happens to consider this monarchy an ally, no matter how imperfect it may be. While Motley is aiming at other foreign parties, too, and while he is not suing the kingdom of Saudi Arabia itself, he is making a rather provocative statement by going after the kingdom's prominent citizens, banks and even some of its leaders. The State Department, while not formally weighing in against the suit, is watching it warily: the last thing it desires is the transformation of the American legal system into a blunt instrument of foreign policy. Bankrupting terrorism is certainly a national priority, even an urgent one, but hardly the task the diplomatic corps wants to entrust to a man who once, during closing arguments, wore a toy stethoscope in court.

Motley insists, frequently and not always convincingly, that he doesn't mean to make a national nuisance of himself; he is simply trying to address a fundamental injustice. Why, in the context of terrorism, should the needs of the state be privileged above the rights of the victims? Or, put another way, why should the flesh-and-blood targets of terrorist attacks -- the deceased and the bereaved -- take a back seat to the less tangible target, the state?

"Going through the court system and trying to take their money is the only recourse I have," explained Deena Burnett, the first client to sign on to Motley's suit. Her husband, Thomas, was on United Airlines Flight 93, which crashed into the empty field in Shanksville, Pa. "I can't join the military. It would be impractical for me to go abroad. But if I can put a stranglehold on their finances," she said, "it assists our president in the war on terrorism."

Whether George W. Bush is grateful for her assistance is another matter. As Motley, a generous donor to the Democratic Party, is fond of pointing out, the president's ties to the Saudi kingdom are personal as well as political: his father, George H.W. Bush, was until recently a senior adviser to the Carlyle Group, an investment firm that counted bin Laden family members among its investors until October 2001. James Baker, whom Bush recently sent abroad seeking help to reduce Iraq's debt, is still a senior counselor for the Carlyle Group, and Baker's Houston-based law firm, Baker Botts, is representing the Saudi defense minister in Motley's case.

Yet however committed a Democrat Motley might be, *Burnett v. Al Baraka Investment and Development Corporation*, as the case is known, could hardly be described as a partisan crusade. Allan Gerson, a Washington lawyer and Motley's co-counsel, worked in the Reagan Justice Department. Private legal actions against terrorist financiers also have the support of a number of prominent Congressional Republicans, who have shown dwindling patience with the Bush administration's gingerly approach to Saudi diplomacy. Senator Arlen Specter, the Pennsylvania Republican, strongly supports Motley's investigation. Charles Grassley, an Iowa Republican and chairman of the Senate Finance Committee, was one of the original proponents of the legislation Motley is relying on for his case. In December, Grassley sent a sternly worded letter to the Treasury Department, demanding to know why the United States was slower than Europe to freeze certain Saudi assets. Last July, Richard Shelby, an Alabama Republican and former chairman of the Senate Intelligence Committee, publicly chastened the administration for classifying 28 pages reportedly about the Saudis from a Congressional report on Sept. 11.

Recently, I asked Shelby if he was nervous that Burnett might complicate life for the president. His answer was blunt. "If Ron Motley can help unravel the mystery of a lot of terrorist financing," he said, "I don't care who the president of the United States is. Or where the trail leads."

Assuming the answer is Saudi Arabia, what does that make Motley's case, exactly? A glorified, globalized tort suit? Or an example of a new wartime jurisprudence, one that fights terrorism with lawyers as well as guns and statesmen? The answer, in a sense, is both, and it could be the new way of the world. Those who take a dim view of Motley's work, dismissing it as nothing more than worldwide ambulance chasing, will be startled to learn that it is theoretically possible, in today's borderless society, to follow a screaming siren all the way to Riyadh. "Telling U.S. courts not to evaluate international tort claims is like King Canute telling the tide not to come in," said Harold Hongju Koh, the international law expert and next dean of Yale Law School. "I'm sorry, but the sun is coming up tomorrow, and it's called globalization."

Last fall Motley stood at a podium of a hotel conference room in suburban Virginia, addressing a large gathering of families of airline-disaster victims. "Let's pick on the Saudis for a moment," he said, grinning as the C-Span cameras rolled. He's regulation height, with a face that reddens easily and hair that's prone to feathering behind his ears. "I loooove," he continued, "to pick on the Saudis."

Motley, 59, is usually a dervish of energy and restless tics. His eyes dart and his fingernails tip-tap; in conversation he regularly interrupts himself. But not here. As soon as he stands before a crowd, armed with a PowerPoint presentation and a linear legal argument, that energy field of mayhem disappears.

"I think," he said, "that we should be very angry with the Saudis."

In order to justify his latest legal undertaking, Motley must establish that the Arabian Peninsula is the fund-raising capital for merchants of terror. Though the allegation has always drawn adamant denials from the Saudis -- their Washington embassy refuses to comment on Motley's case -- it is not, from the intelligence-community point of view, a particularly controversial point. In the months after Sept. 11, Treasury and National Security officials appeared before Congress, declaring Saudi Arabia the epicenter of terrorism financing. (This, in fact, was the precise phrase used by David Aufhauser, a former general counsel to the Bush Treasury Department who was also chairman of the National Security Council's committee on terrorist financing.) Perhaps the most scathing declaration on the subject appeared in a report from the Council on Foreign Relations, issued 17 months ago: "It is worth stating clearly and unambiguously what official U.S. government spokespersons have not. For years, individuals and charities based in Saudi Arabia have been the most important source of funds for Al Qaeda, and for years the Saudi officials have turned a blind eye to this problem."

While Motley suggests that Saudi money occasionally takes a direct path into Al Qaeda's coffers -- generally via wealthy individual donors -- it more frequently takes a circuitous route, either through the clean-and-rinse cycle of quasi-legitimate businesses or, more commonly, through a highly complex web of Muslim charities, which receive a steady stream of alms from both individuals and Saudi banks. Some of the charities named in Motley's suit are already the subjects of federal criminal investigations. But others, like the Muslim World League, are highly esteemed in the Arab world.

"Here's how I would explain to a jury all this legal mumbo jumbo," Motley told the crowd in the hotel conference room. The graphic behind him changed to a cartoon of heaving smokestacks and tangled pipes. "This," he said, "is a terrorist factory. Let's call it Al Qaeda Inc. And those smokestacks are spewing out terror, hatred, jihad, suicide bombers. So who's liable if you've lost a loved one to Al Qaeda Inc.?" He looked around. "It's the bank that loaned the money. It's the architect who designed the factory, knowing it was going to be spewing out hatred. It's the suppliers who supplied the factory with ingredients to manufacture terrorist acts. They're all responsible, each and every one." He thumped the podium. "That's the law of the United States."

Congress has indeed passed several antiterrorism laws over the last dozen years. In 1992, it enacted a law that said terror victims could sue for civil damages; in 1994, it explicitly criminalized providing "material support" for terrorist activities, making sure the definition included not just money but also lodging, training, personnel, telecommunications equipment, false documents, safe houses, transportation -- as broad a range of terrorism services as the authors of the bill could identify. In 1996, Congress also made it possible to file civil suits against foreign governments identified by the State Department as sponsors of terrorism.

The problem with these statutes -- particularly those involving "material support" -- is that they are vague, largely untested and now being challenged partly on First Amendment grounds. For now, Motley is relying on just a handful of precedents to make his case, hoping they aren't overturned along the way. The most important emerged from the Seventh Circuit in the summer of 2002, when the appeals court refused to dismiss a case against several American-based institutions alleged to have contributed to the Palestinian militant group Hamas; the court declared that the

institutions could, under certain circumstances, be held liable for the Hamas killing of an American student, David Boim, in the West Bank, even if the charities had nothing to do with the specific planning of the murder. "Civil liability for funding a foreign terrorist organization," the opinion stated, "does not offend the First Amendment so long as the plaintiffs are able to prove that the defendants knew about the organization's illegal activity, desired to help that activity succeed and engaged in some act of helping." The case, commonly known as Boim, is now in federal court in Chicago.

Of course, with a case involving 205 defendants, many of them armed with the finest legal representation that money can buy, Motley can expect a world's worth of obstacles before Burnett ever gets that far. There will be motions to dismiss, extensions, delays -- all manner of procedural jujitsu that will probably keep the case going for years. Perhaps the biggest procedural obstacle of all is the question of jurisdiction: unlike Boim, Motley's case goes mainly after parties abroad. While collectively they have substantial American assets, it's unclear whether American courts will feel comfortable asserting jurisdiction over them. "The courts," Gerson said, "have to become involved in dealing with the reality of foreign affairs."

From behind the podium, Motley told the audience that he was about to run what he said was a surveillance video made in 1997 by the Madrid Qaeda cell. He warned it would be chilling. "When we intervened with the Spanish prosecution of this case," he explained, "the judge gave it to us."

For Motley, Burnett is a case not ultimately about foreign policy but about facts, which means that proving his defendants knowingly provided material support to terrorists is his other significant legal challenge. For the last two years, he has bankrolled a worldwide intelligence-gathering operation that makes the discovery process, ordinarily marked by subpoenas and dry depositions, read like a Tom Clancy novel. One process server he hired, he told me, disappeared in Saudi Arabia. Motley himself has received death threats, prompting him to hire a 350-pound former Army sergeant, the same bodyguard who accompanied him during the tobacco years.

Around the globe, Motley has hired 10 foreign "informants" -- including a former Taliban official -- whom he insists on referring to by code names (Arnold, the Albanian, the Muslim, Top Source). He has also hired Jean-Charles Brisard, a French intelligence expert, to persuade foreign governments to cooperate with his suit. Brisard is the author of the European best seller "Forbidden Truth," which posited that before Sept. 11 the Bush administration tried to coerce the Taliban into surrendering Osama bin Laden in exchange for a lucrative oil pipeline.

Motley asked his assistant to show the video. The footage at first looked like any tourist video -- a busy Manhattan streetscape, food vendors and people whizzing by, a seemingly reverential shot of the green sign that says Wall Street. Then the camera slowly panned up and down the length of the World Trade Center, while a voice spoke in Arabic. The subtitle translated: "I'll knock them all down."