

Obama Vetoes ‘Sponsors of Terrorism’ Bill That Grew Out of 9/11, but Congress Likely to Override; After 15 Years, Case Against Saudi Arabia May Finally Be Heard

By Michael D. Goldhaber Published: Sep 26, 2016



The burning World Trade Center on Sept. 11, 2001

A decade and a half on, all we've learned from 9/11 litigation is that America's legal system is even more hopeless than its real estate industry, which has finally finished a few grandiose structures at ground zero that are of some redeeming value.

On Friday, President Obama vetoed a bill that would clear the way for a 9/11 tort litigation filed in 2002 – a lawsuit that accuses Saudi Arabia and its charities of helping al Qaida. Some

senators were threatening to delay a veto override and soften the bill. But the **Justice Against Sponsors of Terrorism Act, or JASTA, as the bill is called, passed both houses of Congress unanimously. Some version of it is highly likely to become law this year. What will then unfold in the courts.**

JASTA would **settle three statutory issues in the 9/11 plaintiffs' favor** that were decided against them by the U.S. Court of Appeals for the Second Circuit. First, it would clarify that the **Anti-Terrorism Act contemplates aiding and abetting liability for attacks carried out by designated foreign terrorist groups. Second, it would elucidate that the tort exception to sovereign immunity requires that only the injury (and not the tort) take place in the U.S. Third, it would clarify that state support of terror does not qualify for immunity as a discretionary state function.**

In sum, JASTA would enable U.S. courts to hold nations liable for acts overseas that help designated terrorists to wreak havoc in the U.S. To address the fear that JASTA might boomerang on the U.S. in foreign courts, the **bill would not make a nation liable for mere negligence, nor for an act of war.**

In re Terrorist Attacks on Sept. 11, 2001 is currently on appeal from a district court ruling last October that (not for the first time) dismissed Saudi Arabia from the case. The plaintiff coalition of 9/11 families and insurers is likely to ask for a summary remand in light of JASTA. I'm not sure they'll get it; and I'm not sure they should want it, given the district court's superficial engagement with their complaint until now.

Of the five issues presented for review in the 9/11 plaintiffs' appeal, only one (whether the tort took place wholly in the U.S.) is rendered moot by JASTA. Most of the rest relate to the district court's conclusion that plaintiffs' allegations were insufficient. Whether on appeal or on remand, the next court to consider the case must grapple with the facts. And the facts, like the law, evolved this summer. The next court to consider the case may wish to evaluate the "28 pages," notoriously redacted from Congress' 2002 joint inquiry into the intelligence surrounding 9/11, and finally released in July.

Saudi ambassador Abdullah Al-Saud penned an L.A. Times op-ed titled "There is no smoking gun in the 28 pages, let's move on," where he set up the straw man of "conspiracy theorists" who predicted a smoking gun. Perhaps swayed by U.S. or Saudi public relations, much of the daily coverage was absurdly similar. Consider the headlines in the Associated Press ("New 9/11 document reveals no smoking gun of Saudi complicity"); or Time (No 'Smoking Gun' Tying Saudi Arabia to 9/11 Attacks in Secret 28 Pages").

In truth, the leaders of the campaign to release the 28 pages were not hysterical conspiracy theorists, but sober policymakers — like 9/11 Commissioner and former Navy Secretary John Lehman. "This is not going to be a smoking gun that is going to cause a huge furor," Lehman told "60 Minutes" in April. "But it does give a very compact illustration of the kinds of things that went on that would really help the American people understand why, what, how; how is that these people are springing up all over the world to go to jihad?"

The 28 pages were anticlimactic because their most disturbing intelligence (and much more) was already revealed in the 28 *volumes* of appendices to the 9/11 complaint. We already knew that a man named Omar al Bayoumi—whom the FBI believed to be a Saudi intelligence agent—met with an Islamic Affairs officer at the Saudi consulate in Los Angeles on the very

day that two of the hijackers arrived in America. Bayoumi then greeted the two hijackers at the airport and took them under his wing: housing them, bankrolling them, and embedding them in a Saudi Islamist support network in San Diego. We also knew, in part from the PBS documentary “The Spy Factory,” that the CIA blocked two FBI station agents from relaying this vital intelligence to FBI headquarters.

The juiciest new tidbits in the 28 pages relate to Prince Bandar bin Sultan, who served as the Kingdom’s U.S. ambassador from 1983 to 2005, as well as the head of its National Security Council from 2005 to 2015 and of Saudi intelligence from 2012 to 2014. We learn from the 28 pages that when al Qaida operative Abu Zubaydah was captured, his cell phone contained the numbers of Bandar’s Colorado residence manager, and a bodyguard at Bandar’s embassy. In addition, the number of a Virginia associate of Bandar’s personal assistants turned up at an Osama bin Laden safe house in Pakistan.

These links gain interest in light of Zacarias Moussaoui’s testimony in the 9/11 case that he logged donations from Bandar and his wife to al Qaida, and carried letters from bin Laden to Bandar. The complaint also alleges that Bandar chaired an institute to promote in America Wahhabism – the austere form of Islam that is embraced by terrorist organizations such as al Qaeda, ISIS and Boko Haram. Most pertinently, it alleges that Bandar’s wife, Princess Haifa bin Faisal, indirectly gave \$150,000 to the San Diego hijackers from a Riggs bank account. And the origin of that money is quite a story.

Princess Haifa’s donation connects 9/11 (and perhaps the suppression of the 28 pages) to one of history’s great corruption scandals and coverups. British anticorruption NGOs alleged in *R v. Director of the Serious Fraud Office* (2008) that BAE Systems plc funneled £1 billion to Bandar’s Riggs bank accounts, for Bandar’s help in sealing the Saudis’ £40 billion purchase of British jet fighters in the 1985 “al Yamamah” arms deal. Further, they alleged that Bandar personally threatened to halt Saudi counterterrorism cooperation with the U.K. unless Prime Minister Tony Blair squelched the Serious Fraud Office’s investigation of BAE. The House of Lords, in its ruling on the case, confirmed that Blair squelched the BAE investigation because of such Saudi threats.

Do three very indirect mobile phone links tie Bandar to al Qaida? Certainly not. The reason these bits are new is that the truly disturbing bits of the 28 pages leaked out over time. But they do reinforce the story that radical Islam had infiltrated the Saudi state. And they may help explain why the U.S. thought releasing the 28 pages would be mischievous.

What’s truly disturbing is the story of Bayoumi. For as Lehman notes, his many direct links to the the hijackers can’t be “explained away as merely coincidental.” More than a coincidence and less than a smoking gun amply meets the pleading standard established in *Ashcroft v. Iqbal*.

The U.S. courts should finally give the 9/11 complaint the serious reading it deserves, and give the 9/11 plaintiffs more discovery. I once predicted that a trial would take place by 9/11’s eighteenth anniversary. That may yet happen. But a late amendment to JASTA allows the case to be stayed for state-to-state negotiations. And perhaps that would be a good outcome. Plaintiffs make terrible diplomats. Their strength is intelligence gathering.