

Litigator of the Week: In Terrorism Case, The Long View Paid Off

By **Tony Mauro**

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In Stuart Newberger's legal practice, patience is essential.

The Crowell & Moring partner estimates that 95 per cent of his caseload involves suing foreign governments—not a group of adversaries that is known for making litigation easy. Many of the cases drag on a dozen years or more.

So when Newberger on July 28 logged a significant win in a terrorism suit against Sudan

before the U.S. Court of Appeals for the D.C. Circuit, he shrugged off the fact that it came 17 years after his clients first came to him.

“No problem. You have to take the long view,” he said in an interview this week. “I’m a pretty optimistic guy.”

Newberger's clients were the 70 family members of 10 Americans who died in the 1998 embassy bombings in Kenya and Tanzania. More than 200 people overall were killed in the al Qaeda-sponsored bombings, which proved to be precursors to the attacks in the United States on September 11, 2001.



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The families sued Sudan, claiming that it provided material support and safe haven to al Qaeda before the bombings. Sudan denied any wrongdoing and balked at the litigation for years, but eventually hired a series of major law firms including, most recently, White & Case.

The litigation resumed, culminating in an argument last October that Newberger shared with Gibson, Dunn & Crutcher partner Matthew McGill, who represented a different set of clients including non-Americans victimized by the bombings. Newberger's Crowell & Moring team included partners Clifton Elgarten and Aryeh Portnoy.

Senior D.C. Circuit Judge Douglas Ginsburg wrote a 129-page decision that upheld the judgment imposed by lower courts under federal law against Sudan for the American families. The plaintiffs made the case—supplemented by CIA and other documents—that Sudan played an important role in fostering al Qaeda.

But the ruling nixed \$4 billion in punitive damages that had been part of a total of nearly \$10 billion in damages for the non-American victims. The court sent the claims by non-American families to the local D.C. Court of Appeals for adjudication under “state” law. Judges Karen Henderson and Judith Rogers joined Ginsburg’s ruling.

Newberger is reluctant to give a specific number for how much will go to his American clients, but estimated it at \$660 million. Newberger called Ginsburg’s decision “a fabulous job, probably the most thorough deep-dive, comprehensive decision about this type of case that I’ve ever seen.”

Gibson Dunn’s McGill praised Newberger for his tenacity in coming through for his clients. “Stu might not have invented the long game,” McGill said. “But he is perfecting it time and again making terrorists pay for their crimes. He is a force for good in the world.”

Even though Newberger, 63, is patient, he knows that the wait is agonizing for his clients. “Terrorism cases are heart-wrenching. Peoples’ lives are destroyed.”

For that reason, he has kept in close touch with his clients over the years. Edith Bartley, whose father and brother died in the Nairobi bombing and led the group of litigants, is “in my office all the time,” Newberger said. “We tend to be very close with our clients.”

Is Newberger confident that war-torn Sudan will pay the judgments? Newberger said some uncertainty remains—Sudan might appeal the ruling—but “any way you look at it, at the end of day, there will be a resolution beneficial for our clients, the quest for justice, and even bilateral relations between the U.S. and Sudan.”

His confidence is drawn from his numerous other terrorism-related cases over 30 years of practice. Newberger recently wrote a book titled *The Forgotten Flight* about one of those cases—the 1989 terrorist bombing of French UTA flight 772 over Africa. He represented families of the seven American families killed in the incident.

“I have handled many cases arising from terrorist attacks in all sorts of situations and for all types of victims,” he wrote in the book. “What we have learned from them is that terrorism has no boundaries and has terrible consequences for innocent people, which can last for many years. This is the meaning of terror. And that is why handling these cases is so challenging, and rewarding, for an attorney.”

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