
Law

DOJ and FBI protect Iranian operatives

by Edward Spannaus

The existence of a massive U.S. government "national security" cover protecting Iranian terrorists and Khomeini agents inside the United States has been confirmed in a series of affidavits filed by the U.S. Department of Justice on behalf of various intelligence agencies in Federal court in Washington, D.C. on March 7. The explosive affidavits were filed in response to subpoenas issued in the case of *paigner Publications, et al.*, in which *Executive Intelligence Review (EIR)*, NSIPS news service (*EIR*'s publisher), and other associated publications and individuals including Lyndon H. LaRouche, Jr. have been sued for libel by Iranian banker and weapons dealer Cyrus Hashemi.¹

The Hashemi suit grew out of a series of articles published by *EIR* in 1980 documenting how the Carter administration and British intelligence had made a deal with the Khomeini regime as part of an overall plan of fostering "Islamic fundamentalist" coups and destabilizations through the Persian Gulf area. In those articles, Hashemi and Iranian terrorist controller Bahram Nahidian were named as key figures in Khomeini's secret apparatus inside the United States.

The subpoenas issued on behalf of the "*EIR* defendants" sought any government files pertaining to Hashemi's and Nahidian's reported involvement in illegal activities in the United States. These activities included the planning and financing of the 1980 assassination of anti-Khomeini spokesman Ali Akbar Tabatabai in suburban Washington, D.C., as well as other Khomeini-sponsored clandestine operations conducted inside the United States, such as money laundering and surveillance of anti-Khomeini groupings.

A stone-wall

Although three government agencies admitted to the existence of relevant documents, disclosure of these files was refused on grounds of "state secrets privilege" and national security classification. These three agencies are the FBI, CIA, and National Security Agency (NSA). The CIA and NSA, as well as the State Department and National Security Council, which both denied the existence of any responsive documents, all submitted affidavits either asserting a formal claim of state secrets privilege or denying the existence of documents.

The thickest wall was thrown up by the FBI and the Department of Justice, which not only have classified all their

documents concerning Hashemi and Nahidian, but even classified the affidavits which stated their claims of privilege!

The legal brief submitted by Special Assistant U.S. Attorney Lee S. Strickland argues that any disclosure of the relevant FBI documents would adversely affect the foreign relations of the United States or impair national security. "Because of the sensitivity of the information at issue," argues the Justice Department, "the United States has determined that no substantive statement can be made on the public record. . . ."

The fact that the FBI and the Justice Department not only admitted to the possession of documents, but threw a massive classification screen around them, confirms every charge made by *EIR* during 1980 (see box). The FBI, which has no foreign relations mission whatsoever (unlike the other agencies subpoenaed) is thus implicated in covering up the very terrorist operations which *EIR* said the agency was protecting three years ago.

During the Iranian hostage crisis and the outbreak of Iranian "militant" demonstrations and terrorism in the United States, *EIR* and NSIPS news service charged that a deal had been made between the Carter administration and the Khomeini regime which gave Khomeini's terrorists a free hand to operate within the United States in exchange for hoped-for concessions during the hostage negotiations. Two Iranians who have been publicly identified as middlemen between the Carter administration and Khomeini regime were Cyrus Hashemi and arms dealer Sadegh Tabatabai, Khomeini's son-in-law, who was recently arrested in the Federal Republic of Germany for heroin smuggling (see *EIR*, March 8). Sadegh Tabatabai, long under the protection of West German Foreign Minister Hans-Dietrich Genscher, escaped from the Federal Republic March 9 under the thin cover of "special diplomatic immunity." Tabatabai is known to have met with Carter State Department official Warren Christopher during the hostage negotiations.

The filing of the government affidavits in the Hashemi case March 9 in Washington parallels the scandalous protection which Sadegh Tabatabai received from Genscher, and confirms *EIR*'s original charges that a U.S. "national security" cover had been thrown over the entire funding and carrying out of the assassination of Ali Tabatabai in July 1980. A further indication was that the four individuals eventually indicted for the assassination were all American blacks; no Iranians were charged, even though Nahidian was widely understood to be the on-the-ground controller of the four indicted Americans.

The existence of four classified "responsive documents" was admitted by the CIA. The CIA's affidavit states, after deleting all national security information from the four documents—all CIA cables—that it was providing "all non-privileged parts of such text." However, the U.S. Attorney still refused to release these redacted documents on the grounds that it might infringe the "privacy rights" of "various individuals"—presumably Hashemi and Nahidian.

In addition to the FBI and CIA, the National Security Agency (NSA) also admitted to possession of documents responsive to the subpoena. The affidavit submitted by the NSA contends that the documents pertain to the NSA's "signal intelligence mission" and are therefore privileged information. Intelligence sources report that the NSA often records information obtained by other agencies so the material can be free from disclosure under circumstances where the CIA, for example, might be required to reveal it.

The State Department's and NSC's denial of any relevant documents concerning Hashemi drew particular scorn from *EIR* investigators, since Hashemi is known to have met with both the State Department and Brzezinski's National Security Council during the hostage negotiations, and he identified his own role in the negotiations in a television interview on Jan. 20, 1981.

Daniel Aharoni, lead counsel representing Campaigner and the "EIR defendants" in this case, commented that "it appears that a number of government officials climbed into bed with a bunch of terrorists, and now they are trying to pull the covers up. The claims of national security here do not appear to be a legitimate assertion of the state secrets privilege; rather it looks like a lot of government agents and officers are trying to hide their embarrassing involvement with a group of unsavory characters."

Following the submission of a reply brief by attorneys for *EIR* and related defendants, Federal District Judge Gerhard Gesell is expected to hold a hearing and possibly examine some of the withheld documents *in camera* before ruling upon the propriety of the asserted claims of state secrets privilege.

¹The main case is *Hashemi v. Campaigner Publications, et al.*, U.S. District Court for Northern District of Georgia, Civil Action No. 80-1555A. The proceeding concerning the subpoenas is identified as *Hashemi v. Campaigner*, Misc. No. 83-0017 in the U.S. District Court for the District of Columbia.

U.S. Attorney refuses to release the proof

The following is excerpted from the "Opposition of the Respondents to Defendants' Motion to Compel Compliance with Subpoenae Duces Tecum" submitted by the United States Attorney in Washington, D.C. in response to the EIR subpoenas for FBI, State Department, NSC, CIA, and NSA documents relating to certain activities of Cyrus Hashemi and Bahram Nahidian:

Pursuant to rules 45(d)(1) and 26(b), Federal Rules of Civil Procedure, the respondents National Security Agency

(Subpoena No. 82-0433), Central Intelligence Agency (Subpoena No. 82-0432), and Federal Bureau of Investigation (Subpoena No. 82-0426) oppose Defendants' Motion to Compel Compliance with *Subpoenae Duces Tecum* on the grounds that the records sought are privileged from discovery pursuant to claims of statutory or state secrets privilege; further respondents National Security Council (Subpoena No. 82-0425) and Department of State (Subpoena No. 82-0427) oppose Defendants' Motion to Compel on the grounds that no records responsive to the subpoenae as amended were recovered pursuant to a thorough and diligent search and to require their appearance for deposition would therefore be unduly burdensome. . . .

The *subpoenae duces tecum*, as modified,¹ against the National Security Agency, National Security Council, Federal Bureau of Investigation, Central Intelligence Agency, and the Department of State seek any and all records concerning the participation of Abolfazl Bahram Nahidian and/or Cyrus Hashemi in a checklist of activities described in the Supplemented Complaint in Civil Action No. 80-1555A (N.D. Ga.) *Motion to Compel*, page 2, paragraph 2. Although the subpoenae were worded somewhat differently from the "checklist of activities in the Supplemented Complaint",² the respondents have attempted to fairly interpret the subpoenae in light of the negotiated agreement and have accordingly conducted their searches. . . .

The Federal Bureau of Investigation, through the classified declaration of Oliver B. Revell, Assistant Director of Criminal Investigative Division,³ and the Honorable William French Smith, Attorney General,⁴ has asserted the Secrets of State privilege for the FBI documents recovered pursuant to the defendants' subpoena to the FBI as amended. The existence of this privilege, which has never been doubted, *see, e.g., United States v. Burr*, 25 Fed. Cas. 30 (C.C.D. 1807), protects absolutely from discovery material whose disclosure would adversely affect the foreign relations of the United States or impair national security. *United States v. Reynolds* 345 U.S. 1 (1953); *Kinoy v. Mitchell*, 67 F.R.D. 1 (S.D.N.Y. 1975) (Ward, J.). Once this privilege has been established, no asserted necessity, however compelling, can require production of the material within its protection. As the Court stated in *Kinoy*:

. . . once the Court is satisfied that the material is a secret of state . . . whose disclosure would threaten the national security, the material is absolutely privileged from discovery.

67 F.R.D. at 9. *See, also Reynolds, supra*, 345 U.S. at 11. . . .

Indeed if full litigation of defendants' libel action is barred by the claim of privilege, the courts have uniformly recognized that the public interest would require dismissal of the suit, whether or not the United States was a party. . . .

The privilege of secrets of state for the Federal Bureau of

Investigation documents has been asserted here by the Attorney General in a classified affidavit to be made available to the Court for *in camera* inspection; the relevant documents are similarly available. Because of the sensitivity of the information at issue, the United States has determined that no substantive statement can be made on the public record with respect to the documents or claim of privilege. It is well settled that a claim of state secrets privilege need not be set forth on the open record to any specified degree before *in camera* review may commence, especially when “[i]n camera resolution of the state secrets question [is] inevitable.” *Halkin, supra*, 5989 F.2d at 7. Nor could such a requirement be made, for the danger exists that even making the claim could, in unusual circumstances, reveal a state secret. Here the specificity of documents subpoenaed and the obvious foreign relations concerns preclude any meaningful public showing. Since the Court must take great care in the face of such a claim not to risk revealing such privileged matter, *Reynolds, supra*, 345 U.S. at 8, no such requirement should be imposed. Indeed, the Supreme Court recognized in *Reynolds, supra*, at 10-11, that there could be situations where the full basis for the claim would not even be submitted *in camera* to the court. Here, however, this Court has full opportunity, based on *in camera* review of the affidavits and documents, to determine the validity of the claim. The respondents respectfully submit that such review will clearly support the Federal Bureau of Investigation’s claim of state secrets privilege.

Conclusion

For the foregoing reasons, the defendants’ Motion to Compel must necessarily be denied.

Respectfully submitted,
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 ROYCE C. LAMBERTH
 Assistant United States Attorney
 LEE S. STRICKLAND
 Assistant United States Attorney

¹“... [Documents] ... which indicate Cyrus Hashemi’s or Abolfazl Bahram Nahidian’s participation in any of the activities described in paragraph 1, subparts (a) through (f), of the Supplemented Complaint in Civil Action No. 80-1555A;” Letter from Assistant U.S. Attorney Kragie to Daniel Aharoni, 15 November 1982. A copy is provided herewith as Exhibit A.

²“1. This is a diversity action for defamation, slander per se and libel per se. It involves a set of articles and other publications published by defendants in July and August of this year. In these articles and other publications the defendants make a series of false and utterly groundless assertions purportedly linking Cyrus Hashemi to a variety of unlawful activities in the United States, including but not limited to, a) participation in the planning and carrying out of political *assassinations*; b) providing

funds to help an accused murderer *escape* apprehension by law enforcement authorities; c) “*laundering*” and “*conducting*” funds from the illegal sale of *heroin* and hashish; d) secretly *smuggling funds* into the United States to support *anti-American propaganda* and illegal protest activities; e) being a “*ringleader*” and organizer of *subversive paramilitary activity against the United States*; f) heading up and supervising in the United States an Iranian secret police organization allegedly known as SAVAMA.”

³This declaration is classified at the SECRET level pursuant to Executive Order 12356, it is presently maintained by the United States Attorney in approved classified storage facilities and is available at any time for the Court’s *in camera* inspection. This declaration sets forth the factual basis for the claim of privilege.

⁴The Attorney General’s declaration, which is awaiting signature, is classified at the SECRET level and will assert the formal claim of state secrets privilege. The United States has determined that no substantive portion of these affidavits can be made public without disclosing, directly or by reasonable implication, classified information.

What EIR said in 1980

From an article titled “Civiletti and the Terrorists” by Scott Thompson, published in EIR, Aug. 12, 1980:

High-level U.S. intelligence sources, exiled Iranian political leaders, and officers of a Washington, D.C. police intelligence unit have each independently charged Attorney General Benjamin Civiletti with covering up for the assassins of Ali Akbar Tabatabai, the head of the anti-Khomeini Islamic Freedom Foundation, who was murdered July 22.

This obstruction of justice by a U.S. Attorney General was allegedly committed to protect a political “deal,” whereby Iran would release the 51 American hostages. In exchange, the Carter administration would give Iranian intelligence (Savama) a license to kill any opponents of the tottering Khomeini regime on U.S. territory or elsewhere. The hostage release would be made at a timely moment for Carter’s political fortunes.

Underscoring this “deal” has been repeated Justice Department intervention to stop local police from arresting Washington, D.C.-based Savama station chief Bahram Nahidian, who has been repeatedly named as the field operative in charge of the Tabatabai assassination. Nahidian, whose personal bodyguard David Belfield (aka Daoud Sallahudin) allegedly murdered Tabatabai by shooting him three times in the chest at point-blank range, has been identified by U.S. intelligence sources as the courier between the Carter administration and Ayatollah Beheshti in arranging this deal. If Nahidian is arrested, these sources report, the deal is off.