

The Iranian Papers Case

William Worthy

Paperbacks from Tehran add another kind of weight to unaccompanied luggage.

IN EARLY AUTUMN 1982, I received a victorious phone call from Mark H. Lynch, Washington staff counsel for the American Civil Liberties Union Foundation.

His call came just ten months after the FBI, at Boston's Logan International Airport, had confiscated, from our unaccompanied luggage arriving from Tehran, eleven volumes of Iranian reprints of secret documents seized at the U.S. Embassy in Tehran. His news: the four agencies involved — Customs Service, FBI, CIA, and State Department — had agreed orally to terms for an out-of-court settlement.

The terms: payment of \$16,000 in tax-free damages to me and my colleagues Terri Taylor and Randy Goodman; destruction of "any fingerprint or other investigative materials developed as a result of the seizure and detention" of the paperback books; and the return to us of "any material or documents or copies of same [i.e., correspondence and other personal papers] seized from plaintiffs' luggage."

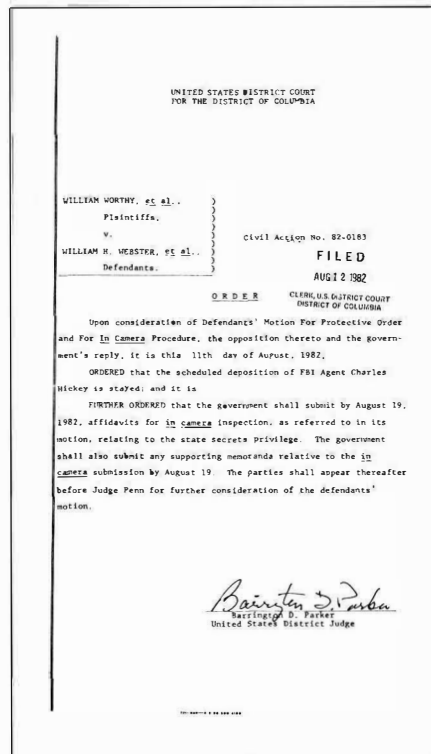
With their covers discolored by fingerprint-lifting chemicals, the books themselves had been abruptly turned over to Attorney Lynch and his co-counsel, Susan W. Shaffer, on March 12, 1982, just before one of several court deadlines had forced policy decisions and action on a foot-dragging bureaucracy.

Given infighting among the four agencies and their hard-pressed attorneys — the Tort Branch, Civil Division of the Justice Department — it took until December for the settlement to be reduced to writing, signed by lawyers for both sides, and filed for signing by U.S.

House, headquarters of the Nieman Foundation. The terms were a sweeping reaffirmation of the First and Fourth Amendments; they upheld the public's right to know, and scotched the dismal prospect that the government could get away with illegal searches and seizures of the personal effects of journalists and other Americans returning home from abroad.

Politically — and all such cases become political in direct proportion to the amount of protective publicity generated — the settlement represented a complete climbdown from the government's three-month-long threat to prosecute the three of us under the Theft of Government Property Act. Knowing firsthand the prolonged disruption of one's life by federal indictments (on two occasions I've been through it, once as a conscientious objector, and once for the novel crime of coming home from off-limits Cuba "without bearing a valid passport"), I for one did not take the threat lightly. This is not to deny the untenability of the official claim that books printed on Iranian paper and on an Iranian press and sold in bookstores all over Iran and in Europe were somehow U.S. government property.

What finally aborted prosecution was the belated realization in Washington that, in order to convict us, CIA officials would have had to testify in open court that the documents were authentic! The "Tehran paperbacks" (as *The Washington Post* later dubbed them) contained, among other politically sensitive materials, a critical CIA analysis of Israeli foreign intelligence and security services, as well as the names of U.S. agents operating in the Mideast,



District Judge John Garrett Penn, to whom the case had been assigned on January 20, 1982, when the ACLU filed suit in our behalf.

Both the filing of the suit several months ago and the settlement on December 9, 1982, were announced at news conferences at Walter Lippmann

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and instructions to protect their cover. Under those circumstances, cooler heads, presumably in the State Department, prevailed. We were not indicted.

There were other factors as well. When we landed at Kennedy Airport, Customs didn't notice in our hand luggage another set of the documents. A few days later, a *New York Times* editor, upon learning that we had them, prevailed on us to turn the papers over to him. A week later, "intelligence specialists" in his Washington bureau, to whom they were rushed for analysis, rejected them, to the dismay and chagrin of the enthusiastic editor in New York.

Meanwhile, Scott Armstrong at *The Washington Post* had called to ask if we might have a duplicate set. Within an hour after the *Times*' final decision, one of Armstrong's assistants had picked them up at the *Times*' bureau. For the next six weeks, Armstrong carefully checked the documents. When *The Post* put everything in the public domain with Armstrong's front-page syndicated series that ran from January 31 to February 6, 1982, and when *The Boston Globe* ran a simultaneous series based on a set of the books obtained in Paris, the thought of federal indictments became even more ludicrous.

Nevertheless, the ideologues and hardliners in the Justice Department didn't yield graciously. For months thereafter they played games in order to keep the elusive Boston FBI agents and also FBI officials in Washington from testifying, under oath, at pre-trial depositions. Finally, on August 11, our out-of-patience ACLU attorneys had brought FBI Agent Charles Hickey to Washington under subpoena. On that very day, in the absence of Judge Penn (who was on vacation), four Justice lawyers — citing the state secrets privilege — prevailed upon Judge Barrington D. Parker, who was totally unfamiliar with the case, to sign a Protective Order staying Hickey's scheduled deposition.

The government also petitioned for an *in camera* and *ex parte* hearing on the state secrets privilege (i.e., a hearing in the judge's chambers from which our attorneys would be excluded).

Through this maneuver the Justice

lawyers won a very brief period of grace. Judge Parker tossed the proceedings back to Judge Penn. Since it was highly unlikely that the Secretary of State and the director of the CIA would have personally trivialized the rarely invoked state secrets privilege by signing off on the final papers, the government stopped playing hardball and began talking settlement.

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The case — a totally unexpected culmination of our eight weeks in Iran under contract with CBS News — had its ironies. When the discolored books were returned to us in March, all the bindings had been broken. Our attorneys learned that the FBI had photocopied everything and rushed copies to all the other U.S. intelligence agencies. With all the resources at its command, it seems inconceivable that the CIA hadn't previously obtained copies. But apparently that was the case.

Still another irony: After the Justice Department attorneys had finally brought the FBI, CIA, Customs, and State Department on board and won their assent to the settlement, one of the attorneys telephoned Mark Lynch at the ACLU to say, with considerable embarrassment, that the FBI was already under court order not to destroy *any* of its records without the judge's permission and without clearance, as provided by law, from the Archivist of the United States.

This time it was the Quakers who were on the FBI's back. The American Friends Service Committee had obtained that broad court injunction at a time, a couple of years ago, when the FBI was destroying documents in order to conceal wrongdoing and to head off lawsuits.

So, pending compliance with that injunction, the settlement in our case reads:

"... the FBI will place all copies of the records to be destroyed in sealed envelopes and maintain them in a special locked file cabinet. Upon the outside of the cabinet the following legend will appear:

The FBI has agreed to destroy all investigative records in this file cabinet pertaining to William Worthy, Teresa A. Taylor and Randy Goodman, in settlement of their claims in *William Worthy, et al. v. William H. Webster, et al.*

They are not to be disseminated in any way pending their destruction upon review by the National Archives and Records Service in accordance with all present and future Orders of the Court in *American Friends Service Committee, et al. v. William H. Webster, et al.*"

After the full text of the settlement was made public at our triumphant December 9 news conference, those reporters who managed to get through to the Justice Department spokesperson got a firm "No comment whatsoever." The Associated Press dispatch read: "John Russell, a Justice Department spokesman designated to comment on the case, did not return four telephone calls from a reporter."

At the news conference I remarked: "Thank God for the Bill of Rights, and thank God for the American Civil Liberties Union."

While we three plaintiffs helped to constrain the government by generating worldwide publicity, the real heroes of this case are the ACLU attorneys, including national staff counsel Charles S. Sims, who slugged it out in the trenches with their official counterparts and ultimately forced them to the negotiating table.

And a very special note of thanks is due to Nieman Curator James Thomson for agreeing to the ACLU's request that the two news conferences be held, with all the helpful symbolism, on the Nieman Foundation's prestigious home turf. □