

# FBI 'stiff-arms' EIR in Hashemi FOIA case

by Edward Spannaus

The FBI is trying to "stiff-arm" *EIR* reporters who are seeking FBI documents concerning gun-runner Cyrus Hashemi, a central figure in the "October Surprise" story, according to legal papers filed in federal court in Washington on Aug. 26.

The papers were filed in a longstanding Freedom of Information Act (FOIA) case brought by various writers associated with *Executive Intelligence Review*. The initial requests in the case were made in 1985, and the lawsuit was filed two years later.

Hashemi died under mysterious circumstances in 1986, and thus, records concerning him are not subject to the privacy provisions of the FOIA. Yet the FBI has refused to process the Hashemi records for the *EIR* requesters, instead demanding that the *EIR* requesters file a new request. This demand was characterized as "an outrageous example of the FBI's penchant for obstructionist tactics in FOIA cases," in the legal briefs filed today by Washington attorney James Lesar, an FOIA specialist.

## 'A hidden motive'

While refusing to process the Hashemi documents for the *EIR* requesters, the FBI is at the same time making them available to another requester who asked for them later. "The FBI may well have a hidden motive for desiring to stiff-arm plaintiffs, the initial requesters, while they provide the very same documents to a subsequent requester," argued Lesar. "The Hashemi documents are a hot political item; the FBI may prefer to release them first to a requester it finds more congenial."

The FOIA requests asked for all records concerning Hashemi, his brother Reza, and others who were indicted in 1984 for illegal arms exports to Iran. Other subjects of the FOIA requests are Hashemi's First Gulf Bank & Trust Company, which was used as a conduit for arms deals and for funding Iranian terrorism in the U.S., and former Justice Department official Stanley Pottinger.

Pottinger was named as an unindicted co-conspirator in the Hashemi indictment, but he escaped indictment after the FBI allegedly "lost" tapes of the wiretaps on which Pottinger was overheard advising the Hashemis how to circumvent the U.S. arms embargo against Iran.

More importantly, the FBI tapes are thought to contain critical evidence about the "October Surprise" caper, in

which officials of the Reagan-Bush campaign conspired to delay the release of the U.S. hostages in Iran until after the November 1980 elections. The timing of the wiretaps is particularly important. All accounts of the October Surprise affair identify a series of meetings in Paris from Oct. 15-20, 1980, as concluding the deal by which the radical fundamentalist mullahs in Iran agreed to delay the hostages in return for arms shipments. Indeed, on Oct. 21-22, the Iranians broke off negotiations with the Carter administration and announced that they were no longer interested in getting arms and spare parts from the U.S. This dashed the hopes of Jimmy Carter for a deal and therefore for reelection.

Significantly, it was on Oct. 21, 1980 that the wiretaps were placed on Hashemi's New York offices, and Pottinger was overheard advising the Hashemis how to use dummy corporations located in London and Panama to ship crucial materials to Iran. In light of their potential importance in elucidating the October Surprise affair, it is no surprise that the FBI is stonewalling both Congress and *EIR* FOIA requests on the tapes.

The FBI has refused to even acknowledge the existence of any record concerning the wiretaps. After an FBI affidavit declared that no record of the wiretaps had shown up in its ELSUR (electronic surveillance) index, attorneys for the *EIR* plaintiffs submitted a copy of a court order from the New York Hashemi criminal case which stated that the FBI had conducted electronic surveillance on the offices of First Gulf Bank & Trust in New York. In papers filed in mid-August, Justice Department lawyers advanced the preposterous argument that the federal court order concerning a surveillance in New York has no relevance, since plaintiff's FOIA requests were directed to FBI headquarters!

However, the FBI's own affidavits submitted in this case, describing the FBI's ELSUR system, state that two index cards are created for any electronic surveillance. One stays in the field office (i.e., New York), and one is sent to FBI headquarters in Washington. Thus an FOIA request directed to FBI headquarters should turn up records of a surveillance anywhere in the country. Nonetheless, the FBI continues to pretend that it has no records of either the wiretaps or of the controversy surrounding their disappearance.

Congressman Peter Kostmayer (D-Pa.) has asked the FBI, CIA, and the U.S. Attorney's Office in New York to find the tapes and to turn them over to Congress. William Wachtel, former lawyer for Cyrus Hashemi, has said that he has copies of some of the transcripts, but that he has been threatened with prosecution by the CIA if he makes any of the information public.

In asking Judge Stanley Harris to order the FBI to conduct a further search and release the documents now, attorney Lesar has told the court that "the public controversy over the 'October Surprise' issue is rapidly heating up, and further delay may undercut their usefulness to the public debate over that issue." This is clearly what the FBI has in mind.