

How Steptoe Turned the Tables on SDNY Prosecutors in Iran Sanctions Case

Steptoe lawyers over the past four months have relentlessly pursued potential exculpatory evidence they suspected the government withheld in the prosecution of Ali Sadr Hashemi Nejad, an American-educated entrepreneur born in Iran.

By Ross Todd
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When U.S. District Judge Alison Nathan late last week dismissed the criminal case against Ali Sadr Hashemi Nejad, her order brought some welcome closure for the American-educated entrepreneur born in Iran and his lawyers at **Steptoe & Johnson**, a team led by **Brian Heberlig** and **Reid Weingarten**.

The ruling was a dramatic turnaround for Sadr, who had been found guilty in March by a federal jury in Manhattan of violating the U.S. sanctions regime against Iran in connection with a \$475 million contract an Iranian company controlled by his father entered into with a state-owned company in Venezuela to build low-income housing. Since the transaction was conducted in U.S. dollars, prosecutors in the Southern District of New York had tried Sadr on the novel theory that he had induced U.S. banks involved in the transaction to export their financial services to Iran. That, prosecutors argued, put the banks at risk of potential penalties from the Office of Foreign Assets Control or OFAC, the arm of the Treasury Department which oversees economic and trade sanctions based on US foreign policy.

Despite the verdict, the Steptoe lawyers over the past four months have relentlessly pursued potential exculpatory evidence they suspected the government withheld. Indeed, because of their work, last week's order from Nathan has been something of a foregone conclusion for more than a month: Then-Southern District U.S.

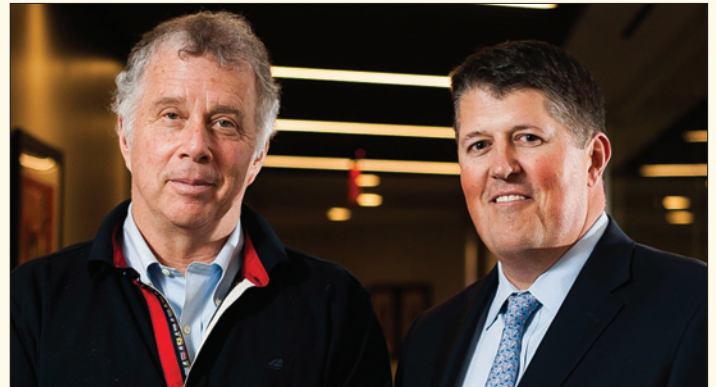


Photo: Diego M. Radzinski/ALM

Reid Weingarten, left, and Brian Heberlig, right, of Steptoe & Johnson. November 28, 2016.

Attorney Geoffrey Berman last month sent a letter to Nathan acknowledging that there has been “disclosure-related issues” in the case and that prosecutors had determined it “would not be in the interests of justice to further prosecute this case.”

“We kept pushing, and even after we got this profoundly disappointing verdict, we didn’t stop,” said Steptoe’s Heberlig in a phone interview Wednesday. “I think it’s important not to give up. We pressed for *Brady* evidence at every stage of the case prior to trial. We were told there was none.”

Sadr’s lawyers’ first big break on the *Brady* front was a document prosecutors failed to disclose until over one weekend midtrial, a letter from one of the banks involved in the underlying deal to OFAC flagging that one of the companies set to receive funds, a Turkish

company named Stratus, appeared to be affiliated with an Iranian company of the same name.

Did prosecutors know that the letter, which OFAC never took action on, was problematic to their case? They've argued that at the time they discovered it, they were considering offering it into evidence themselves. That argument seems a bit suspect, to put it lightly, considering one of the AUSAs involved in the case suggested that the prosecution team "bury it in some other documents" in emails that have surfaced in subsequent court filings. The Steptoe lawyers recognized the document's potential exculpatory value almost instantly after receiving it via email on a Saturday afternoon midtrial.

"Immediately, we asked them, 'What is this? Where did it come from? And why didn't we receive it until now?'" says Heberlig.

In a hearing on the document the following Monday, Nathan indicated that the late disclosure had "a tip-of-the-iceberg feeling to it." And from the volume of disclosures that prosecutors have handed over since, it seems the judge had a point.

For one, the government later handed over interactions one of the prosecutors had with officials at OFAC, including a PowerPoint presentation laying out the government's theory of the case. OFAC officials reviewed the materials and declined to take any action of their own.

On top of that, prosecutors admitted that a recording of an interview with a witness, the project manager on the Iranian side of the deal, which Steptoe lawyers had been requesting for months had been in the possession of the FBI agent on the case, despite prosecutors' indications that it was held up in some sort of bureaucratic delay. The interview recording, according to the Steptoe lawyers, indicated that the witness had a similar understanding of the Iranian sanctions regime as Sadr's—that the sanctions applied to the Iranian government and certain industries, but not run-of-the-mill private Iranian business.

Posttrial, the government also disclosed witness statements from someone on the other side of the transaction, a finance official with the Venezuelan company, who came forward to profess that he hadn't done anything

wrong and that the company's lawyers had vetted and cleared the contract.

But according to Heberlig, perhaps the "biggest bombshell" handed over by prosecutors posttrial was information they disclosed about the initial warrants obtained by state prosecutors who obtained access to Sadr's email when investigating whether he violated New York law. Communications between the state prosecutors and federal investigators raised the specter that Sadr's emails which weren't covered by the warrant could have been swept up in the collection and that the materials were inappropriately shared with federal investigators. Heberlig says, knowing what he knows now, he would have had a much stronger case for suppressing the emails that formed a large portion of the government's trial presentation.

"The case against Ali was built entirely on the email evidence. The government didn't really have fact witnesses. They didn't have cooperators," he said.

Prosecutors have maintained that the disclosure failures were a product of unintentional error by line prosecutors. But Nathan, who indicated at a hearing last months that she had "serious concerns" about government conduct in the case, wrote earlier this month that she might need "to hold an evidentiary hearing in order to independently assess whether the issues that have arisen were the product of bad faith, knowing misrepresentations, or an intentional failure to comply with discovery obligations." But the judge has also said that such a hearing would need to be held in-person "when safely feasible."

Meanwhile, the Steptoe lawyers convinced Nathan to dismiss the charges against Sadr in a manner where the vacated jury verdict shouldn't negatively affect their client's immigration status.

Despite what Sadr's been through, Heberlig says, "he still is a patriotic supporter of the U.S. who wants to spend his life here with his family."

Ross Todd is the Editor/columnist for the *Am Law Litigation Daily*. He writes about litigation of all sorts. Previously, Ross was the Bureau Chief of *The Recorder*, ALM's California affiliate. Contact Ross at rtodd@alm.com. On Twitter: [@Ross_Todd](https://twitter.com/Ross_Todd).