

**GIVLER
DECLARATION**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ASSOCIATION OF AMERICAN :
UNIVERSITY PRESSES, INC.; THE :
PROFESSIONAL/SCHOLARLY PUBLISHING :
DIVISION OF THE ASSOCIATION OF :
AMERICAN PUBLISHERS, INC.; :
PEN AMERICAN CENTER, INC.; and :
ARCADE PUBLISHING, INC., :
:
Plaintiffs, :
:
- against - :
:
THE OFFICE OF FOREIGN ASSETS :
CONTROL OF THE DEPARTMENT OF THE :
TREASURY; JOHN W. SNOW, SECRETARY :
OF THE TREASURY, in his official capacity; :
and R. RICHARD NEWCOMB, DIRECTOR, :
OFFICE OF FOREIGN ASSETS CONTROL, in :
his official capacity, :
:
Defendants. :
----- X

**DECLARATION OF
PETER GIVLER**

Pursuant to 28 U.S.C. § 1746, I, Peter Givler, hereby declare under penalty of perjury that the following is true, to the best of my information and belief:

1. I am the Executive Director of The Association of American University Presses (“AAUP”), a plaintiff in this action. I submit this declaration in support of plaintiff’s application for a preliminary injunction and for declaratory relief.

AAUP And Its Publisher Members

2. AAUP is the trade organization for non-profit scholarly publishers. Founded in 1937 and headquartered in New York City, it currently has 124 publisher members. (See Exhibit A hereto for membership list). AAUP’s members primarily consist of university presses,

namely publishers affiliated with research universities, as well as non-profit publishers affiliated with scholarly societies, research institutions, museums and other similar organizations.

AAUP's members publish over twelve thousand scholarly books annually, the vast majority of scholarly books published in this country in the humanities and social sciences, as well as seven hundred scholarly journals in a wide variety of academic and professional fields. AAUP's members include, to name but a few examples, Harvard University Press, Yale University Press, Princeton University Press, The University of Chicago Press, Johns Hopkins University Press, Cornell University Press, Columbia University Press, The MIT Press, The University of California Press, the RAND Corporation, The Modern Languages Association and the National Gallery.

3. AAUP's members publish books and journals in innumerable areas of scholarly interest in the social sciences, humanities and science written by authors around the globe. These range from books and journal articles on history, public affairs, public health and Middle East Studies, to works of literature and poetry (see Exhibit B hereto for "Subject Area Grid" for AAUP members). The works published by AAUP's members fill the nation's libraries and are widely read throughout the world by leaders and experts in every field. They are taught in university curricula worldwide and are distributed through all the usual booksellers to broader lay audiences.

4. As non-profit organizations, the primary mission for AAUP's members is to advance the state of knowledge rather than earn a profit, a reality reflected in the breadth and depth of their publishing programs and their ability to publish works on topics before there is broad general interest in them. Whether they exist as freestanding corporations or as divisions of their universities, university presses are governed by editorial boards, which bear the

responsibility for determining what books and journals shall appear under the press's imprint. Peer review plays a crucial role in making this determination at university presses. Experts in the relevant field read and evaluate a particular work's contribution to its field, and often provide extensive critiques of the manuscript to help strengthen it. These reviews are provided to the editorial boards to aid them in making their decisions. Editorial boards are composed of faculty members or of scholars affiliated with the parent institution. Faculty members may also serve as series editors, or the press may develop and publish works in fields of keen interest to members of the faculty.

5. The works published by AAUP's members constitute an integral part of knowledge worldwide in the social sciences, humanities and science, including the topics that bear upon the conduct of this nation's foreign affairs. Stated simply, a great many of the most important, serious works are published here by AAUP's members. They are distributed internationally both by AAUP's members directly, and through license agreements with foreign publishers. The peer review process, the strength of America's universities, and the historical openness of the United States to new ideas have all contributed to American primacy in scholarly publishing. Authors and other contributors in many countries, including countries subject to United States trade restrictions, are necessarily involved in creating the works published by AAUP's members.

6. AAUP joins in bringing this action because trade restrictions are being applied to restrict the flow of valuable information into the United States, compromising the ability of American publishers to make critical contributions to the worldwide exchange of information and ideas and potentially impairing advances in scholarship in the United States. Regulations administered by the Office of Foreign Assets Control ("OFAC") of the United States Department

of the Treasury (the “OFAC Information Regulations”) restrict the publication of works by authors in countries such as Iran, Cuba and Sudan by forbidding certain activities by American publishers that are essential to publishing: commissioning new works by authors in those countries, paying advances to them for not yet fully completed works, making substantive or artistic alterations or enhancements to works created by individuals in the restricted countries, and promoting or marketing their works. The regulations on their face allow Americans to import or publish works that already exist in final form, but such works cannot be substantively or artistically altered or enhanced, and they cannot be promoted or marketed. The regulations provide for civil and criminal penalties for their violation.

7. Contrary to the intent of Congress, the OFAC Information Regulations make ordinary, necessary publishing activities violations of the law and exert an inhibiting effect on all publishers, including AAUP’s members. As set forth in greater detail below, they effectively forbid the publication of all books authored by residents of the restricted countries. Further, they penalize American publishers for attempting to apply rigorous academic and editorial standards to all their publications, including those from authors in Cuba, Iran, or Sudan. In a perverse fashion, they appear to allow the re-publication of works that can be published in these repressive regimes – the tepid prose and uncontroversial ideas that can get past the eyes of censors. In practice, however, even these works cannot be realistically published here in light of OFAC’s prohibition against marketing such works.

8. One of AAUP’s principal purposes, as stated in its bylaws, is “to encourage dissemination of the fruits of research and to support university presses in their endeavor to make widely available the best of scholarly knowledge and the most important results of scholarly research.” This declaration explains how the OFAC Information Regulations severely impair the

pursuit of those goals by prohibiting our members' ordinary publishing activities.

9. Separate declarations describing several important works that AAUP members had planned for publication which have been derailed as a result of the OFAC Information Regulations are submitted herewith: the declarations of John G. Ackerman, Director of Cornell University Press; Daniel J.J. Ross, Director of The University of Alabama Press; Janet Francendese, Editor in Chief of Temple University Press; and William Breichner, Journals Publisher of The Johns Hopkins University Press. Plaintiffs also submit the declaration of Scott Mahler, former Senior Editor for the Smithsonian Institution Press, which is a member of AAUP.

**Important Works Are Not Being Published As
A Result of the OFAC Information Regulations**

10. AAUP joins this lawsuit out of a conviction that broader understanding and knowledge are critical to the conduct of worldwide foreign relations, in particular for a democratic nation premised on the principle of self-government. The need for knowledge and communication is greatest when the United States finds itself facing challenging relations with a foreign regime. Understanding the historical, cultural, religious, and political realities of such societies is essential to determining our policies toward such nations. The freedom to publish works from authors in the restricted countries is therefore imperative. How can we understand such countries and their governments if we cannot hear from their citizens?

11. The events of September 11th forcefully illustrated the lesson that knowledge of foreign countries and their history and culture is critical to our self-governance. After the attacks on the World Trade Center, there was tremendous hunger for books on all related topics. Three books published within the preceding 12-18 months by university presses were already in bookstores and thus available to meet the public's need and shot to the top of the bestseller lists: *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia* by Ahmed Rashid, published

by Yale University Press; *The New Jackals: Ramzi Yousef, Osama Bin Laden and the Future of Terrorism* by Simon Reeve, published by Northeastern University Press; and *Twin Towers* by Angus Kress Gillespie, published by Rutgers University Press.

12. The broad cry for books that would give Americans a better understanding of the entire region led AAUP in late September, 2001 to create and distribute a bibliography of its members' books titled "Books For Understanding" on topics broadly related to the September 11 attacks, including terrorism, Islamic fundamentalism, the politics of the Middle East, and the history and culture of the Central Asian republics. This resource guide included many academic press books on Iran by authors located here and abroad (see excerpt on Iranian books, Exhibit C attached hereto). The program was so successful that in June 2002, AAUP released a Books for Understanding bibliography on Iraq (Exhibit D, hereto) ; in February 2003, AAUP released a Books For Understanding bibliography on North Korea (Exhibit E, hereto); in March 2003 AAUP launched a Books for Understanding bibliography titled "The U.S. at War," which included expanded bibliographies from the September 11 resource guide; and recently AAUP created a Books for Understanding bibliography on the Sudan (Exhibit F, hereto).

13. If we, as a nation, are to foster advances in scholarship and gain the knowledge necessary for the conduct of foreign affairs, and if American scholarly publishers are to retain their international primacy, American publishers must be able to freely publish the works of authors from the restricted countries, which the OFAC regulations currently prohibit. First, nationals of any country have a life-long intimacy with their nation's culture, an understanding of its ways, that is impossible for an outsider to duplicate. Similarly, only nationals living under a given regime or in a particular war-torn state can most vividly describe the events unfolding, untransformed by the filter of intermediaries. Books by American authors necessarily examine

things through a lens formed by our own culture. If we are to understand differences, we need to be able to hear from authors writing about their own countries. Had the authors of *Reading Lolita in Tehran* (Azar Nafisi) or *Persepolis* (Marjane Satrapi) not left Iran before publishing these highly acclaimed popular works on Iran, Americans never would have been able to benefit from their insights.

14. Second, authors in the restricted countries have access to sources unavailable to Americans, in particular because political tensions and trade restrictions often severely restrict access by Americans. I use the term “sources” in the broadest fashion – ranging from library materials to interview subjects to physical source material, such as archeological sites. As but one example, the accompanying declaration of Daniel J.J. Ross, Director of The University of Alabama Press, describes two important books which draw on sources unavailable to U.S. scholars that have been halted by the OFAC Information Regulations. The first concerns a largely unstudied slave revolt in Cuba in 1825 and is based on previously unpublished materials from the Cuban National Archives. As the peer reviewers confirmed, that revolt has much to teach us about the larger subject of African slavery in the Atlantic region. The second book, titled *Dialogues in Cuban Archeology*, is a collaboration between American and Cuban scholars dependent on the latter’s access to Cuban archeological sites, long off limits to American archaeologists.

15. Further, in particular in the hard and social sciences, certain phenomena – whether they be particular diseases or environmental conditions or natural events – occur far more frequently in particular locations. The OFAC Information Regulations interfere with the ability of American scholars and publishers to benefit from the work of Iranian seismologists on earthquakes in Iran and the work of Cuban doctors on infectious diseases that are currently more

prevalent there than here. As detailed in the declaration of John G. Ackerman, Director of Cornell University Press, the OFAC regulations have prevented the publication of a revised version of the *Field Guide to Birds of Cuba*, an important ornithological work on Cuban birds' habits and migration patterns with a forward by the emeritus director of the American Museum of Natural History.

16. Moreover, unique and particularly exciting approaches often develop within a given culture and then more broadly influence other cultures. Whether it be French literary criticism or Cuban music, certain cultures at given moments advance an art or discipline notably, and in turn influence others. One of the most important aspects of scholarly publishing is to permit the cross-fertilization among scholars and artists that allows them to grow from each other's ideas. Once again, the OFAC Regulations interfere with this critical process. As evidenced in the declarations of Janet Francendese, Editor-in-Chief of Temple University Press and Scott Mahler, former Senior Editor for the Smithsonian Institution Press, the OFAC Regulations have prevented the publication of valuable works on Cuban music, which has strongly influenced Latin music generally, and Cuban colonial architecture.

17. Finally, the absurdity of the OFAC Information Regulations is that a dissident or critic who is not free to publish his or her criticisms of the governing regime at home now cannot publish them here. History teaches us that dissidents often play crucial roles in bringing down repressive regimes. The works of Aleksandr Solzhenitsyn, Nelson Mandela and Bishop Desmond Tutu readily come to mind. As with Solzhenitsyn's early works, the ability to publish those works in the United States is often critical since they may not be publishable in the author's home. The OFAC Information Regulations either preclude entirely the publication of such works by American publishers or force American publishers to publish the watered-down

criticisms palatable to the governing foreign regimes. In the name of fighting repressive regimes, OFAC has embraced one of their worst aspects.

The Editorial and Publishing Processes of Scholarly Publishers

18. The OFAC regulations prohibit (i) “transactions related to information or informational materials not fully created and in existence at the date of the transaction,” including payment of an advance; (ii) “the substantive or artistic alteration or enhancement of information or informational materials,” including collaborations, and (iii) “the provision of marketing and business consulting services” for information and informational materials.

19. The OFAC Information Regulations thus interfere with the right of American publishers to acquire, edit, publish and market works in keeping with their publishing interests and editorial standards. To be meaningful, the right to publish must include the right to bring new works into existence; the right to pay for new works, including by the payment of an advance on royalties; the right to substantively edit and enhance both new works and works that already exist; and the right to market and promote both new and previously existing works. In the real world of book publishing, the combined effect of the OFAC Information Regulations is to ban the publication of *all* books authored by authors in the restricted countries by American publishers.

20. The standard practices of AAUP’s members in acquisitions, peer review, and the editing process illustrate the ways in which the prohibitions of the OFAC Information Regulations conflict with the basic publishing activities of scholarly publishers.

21. I have personal knowledge of the matters described herein. Over the last 34 years, I have held a variety of positions in both commercial and nonprofit publishing. I served as Director of the Ohio State University Press from 1985-1995 and have served as Executive

Director of the Association of American University Presses since 1997. I am currently on the Board of the Book Industry Study Group and the Editorial Board of Publishing Research Quarterly. I previously served as a board member of the Association of American Publishers and as the Secretary-General of the International Association of Scholarly Publishers.

22. It is standard practice in the book publishing industry to enter into a publishing contract for a new book or for a work that will undergo significant revisions. While publishers sometimes acquire only reprint rights for books previously published abroad, AAUP's members most often enter into a book publishing contract for a work "not yet fully created and in existence at the date of the transaction."

23. The acquisitions process typically works in one of a few fashions. Most frequently, an author submits a proposal and sample chapter(s), or even at times a full-length manuscript, to an acquisition editor for his or her review. If the acquisition editor is interested in the project, the materials submitted by the author will be sent to two or more peer reviewers, who are experts in the field, for their assessment of its scholarly merit, their suggestions for revisions, and their analysis of the relative need for a new book on that topic. After receipt of the peer reviews, a faculty editorial board will decide whether to offer a publishing contract to the author. If the press wishes to publish the work, standard practice is to enter into a publishing contract with the author at that stage, conditioned on the eventual editorial acceptability of the completed work. At times, acquisitions editors or series editors will also contact well-known authorities in the field to induce them to write a book on a particular topic important to the publishing program, and the faculty editorial board will authorize the press to enter into a publishing contract for the commissioned work at that juncture. In either circumstance, the standard practice is to enter into a contract for a new work or a work that will undergo significant

revisions prior to its publication by the American publisher.

24. It is also common practice for the publishing contract to include an advance on royalties, as well as a provision for royalty payments based on sales of the book and sales of subsidiary rights. The advances paid by AAUP's members generally range from \$500 to \$100,000, with the majority of such advances falling within the range of \$1000 to \$5000. Royalties are generally in the range of 5% to 15% of net receipts. The advances paid to authors for not-yet-fully-created works do not differ in kind from the advances paid to authors for reprints of previously published works.

25. After a book is acquired, AAUP's members continue to play an integral role in shaping the work. The initial insights of the peer reviewers are communicated to the author for incorporation into the work. In some circumstances, the acquiring editor will provide substantive suggestions to the author on the content, organization and style of the book in the developmental stage as chapters of the book are written. After the author submits a complete draft of the manuscript, the manuscript is submitted again for peer review by experts in the field, unless the complete manuscript was submitted to peer reviewers before it was acquired.

26. The overall aim of the peer review system is to ensure the high quality of the scholarship published by university presses. At this stage, the peer reviewers assess the merits of the draft manuscript and provide a written report with detailed recommendations for substantive revisions. Such reports are sometimes as lengthy as 20-25 pages. The nature of the peer reviewers' comments range widely, but their clear aim is to substantively revise and enhance the manuscript. Peer reviewers compare the work with prior scholarship in the field and often make comments on whether the author has adequately and accurately placed her work within that context. Peer reviewers often examine an author's methodology, question various conclusions

reached by the author, outline passages that make unwarranted or implicit assumptions, and provide a critique of the manuscript's lines of argument. Peer reviewers often indicate that certain topics covered in the manuscript are insufficiently developed whereas other topics warrant less attention. In short, peer reviewers contribute critical ideas to the development of a work and often provide detailed substantive revisions, sometimes page by page. And while an author need not make each and every suggested revision, the reality is that authors must address the peer reviewers' core concerns in order to ensure that their work is acceptable to the publisher under the publishing agreement.

27. Following the author's revisions of the manuscript based on the peer review process, the acquiring editor then performs substantive editing of the work. Acquiring editors are not only publishing professionals but often have expertise in the substantive field. The acquiring editor edits the manuscript for, among other things, general coherence, organization, structure and readability. This entails giving comments to the author and, often, substantially rewriting sections of the manuscript. In a fashion similar to the peer reviewers, the acquiring editor may also provide detailed comments on the substance of the work as well as its presentation, including the relative emphasis that should be placed on certain topics. If a book has the potential to appeal to a general audience, the editor may draft text necessary to make the book understandable to lay readers. Faced with problematic passages or sections, editors also edit line by line to address issues of style, organization and readability. In sum, acquiring editors bring their skills to bear as publishing professionals to substantively enhance a work and ensure that it meets the publisher's editorial standards and communicates effectively with the intended readers.

28. After the author completes his or her revisions based on the substantive

editing, the publisher copy-edits the work. Copy editors edit for grammar, punctuation, spelling, bibliographic form and other similar conventions. The final stage of the process is book design and creation of a book jacket or cover, functions that are also performed by the publisher. For certain types of works, especially highly graphic works or highly illustrated works, the interior book design can be centrally important and critically enhance the publication.

**The Prohibition On Transactions Related To Information
Not Yet Fully Created At The Date Of The Transaction**

29. As the description above makes clear, OFAC's prohibition on "transactions related to information or informational materials not yet fully created and in existence at the date of the transaction," including the payment of an advance against royalties, directly conflicts with standard industry practice and significantly impairs the ability of American publishers, including AAUP's members, to publish books in keeping with their publishing programs.

30. The prohibition cuts American publishers off from all potential authors in the affected countries and interferes with AAUP's members' ability to engage in long-term planning to shape their lists to match the areas of greatest interest to them and their affiliated universities. The ability to enter into contracts for new works is essential. Few authors would spend the hundreds, if not thousands, of hours necessary to write a book without strong assurance of publication. Further, advances are often a significant inducement to authors, many of whom could not afford to spend the time to write the book without the advance, even though the advances paid by AAUP's members may be relatively small.

31. Even more critically, the prohibition against entering into a contract for a work that is not yet complete interferes with publishers' ability to mold a work as it is in progress, in conformity with their publishing interests and standards and the needs of the academic market. Publishers can only provide substantive input into a work by contracting with the author before it

is “fully created.” The editing and peer review processes described above are all the more important with foreign authors, including those in the restricted countries. With foreign authors, collaborative editorial work is almost always necessary to render the work appropriate to the American market. Foreign authors necessarily operate under different cultural assumptions. Concepts familiar to them may need to be explained to an American audience; American perspectives on a subject may need to be incorporated or addressed; certain topics may require more or less detail for an American audience. For these reasons, even where non-fiction works have been published abroad, AAUP’s members usually enter into contracts with foreign authors that contemplate substantial revisions prior to publication here.

32. In its worst irony, the prohibition against entering into transactions regarding works that are not yet completed forbids AAUP’s members from entering into book publishing contracts with human rights activists, dissidents, members of the opposition and other critics residing in the restricted countries who wish to prepare new or revised works to be published in this country. These are vitally important works to publishers and the public because they cannot be published in their authors’ home countries.

**The Prohibition on Substantive or Artistic
Alteration or Enhancement of Information**

33. OFAC’s prohibition on “the substantive or artistic alteration or enhancement of information or informational materials,” also conflicts directly with standard industry practice and radically impairs the ability of American publishers, including AAUP’s members, to publish books in keeping with their academic and editorial standards.

34. As reviewed at length above, the peer review and editing processes form a critical part of scholarly publishing. Their very aim is to provide “substantive... alteration or enhancement of information” in the ordinary meaning of those words. These activities do not

merely benefit the author. The peer review and editing processes uphold the reputation of the American publisher and benefit the public as much as they assist the author.

35. In addition to editing, there are many other ways in which AAUP's members regularly engage in substantively or artistically enhancing or altering a work written by a foreign author or participate in such enhancements. Collaborations or co-authorships between American authors and authors in the restricted countries form an especially valuable form of publishing. Collaboration on journal articles in the sciences is the rule more than the exception, and journal articles in the social sciences sometimes follow this model. *Dialogues in Cuban Archaeology*, a collaboration between several American and Cuban archaeologists described in the accompanying declaration of Daniel J.J. Ross, is a perfect example of the benefits of collaboration by scholars in different countries. Such works provide unique opportunities for cross-cultural understanding.

36. Other standard enhancements contributed by AAUP's members are introductions and notes. With books by foreign authors, it is almost always necessary to include an introductory essay or preface from an American scholar to provide context for the foreign author's work and to relate it to American scholarship. *The Encyclopedia of Cuban Music* contemplated for publication by Temple University Press, for example, would surely have included an introduction by an American musicologist detailing the impact of Cuban music on Latin music in this country and explaining the author's prominence in Cuba as a preeminent music scholar.

37. Likewise, it is often necessary to include explanatory notes in works authored by foreign scholars. Without such notes, references would not be understood by the American reader. Depending on the nature of the book, such explanatory notes can be extensive.

38. On certain projects, AAUP's members also substantively enhance works by adding photographs, illustrations, maps and/or chronologies or time lines. Such additions can transform a work. For example, the U.S. version of *The City of Columns* under preparation for publication by the Smithsonian Institute Press, described in the accompanying declaration of Scott Mahler, would have included photographs by esteemed American and Cuban photographers to illustrate an essay on Cuban architecture by one of the leading literary voices of 20th century Latin America, but publication was suspended because of the OFAC Information Regulations.

39. Finally, works written by authors in the restricted countries must be translated for publication by AAUP's members. Although OFAC has recently suggested that translations do not constitute the "substantive enhancement" of information forbidden under the regulations, translators do not engage in a literal translation of text. Rather, especially with literary or creative works, translators mediate between the language of the original and the linguistic culture of the target audience in a search for cultural equivalents and, in the case of poetry, a similar meter or rhythmic effect as well. Translation is an art that requires extensive knowledge of language and culture. As a paradigmatic example, think of the *Iliad* and *Odyssey* by Homer. Translations of these works have differed radically, even ranging from blank verse to rhyming verse. Translators working with AAUP's members inevitably "substantively alter or enhance" the works they translate.

The Prohibition On Marketing

40. The OFAC Information Regulations explicitly forbid the "provision of marketing services" in connection with information from the restricted countries. It is effectively impossible to publish a book without marketing it. Thus, although the OFAC Information

Regulations nominally permit the publication of completed works by authors in the restricted countries, in reality the regulations amount to a ban on the publication by American publishers of *all* works by authors in the restricted countries.

41. Books do not sell themselves. Nor are they distributed by subscriptions.

Book publishers engage in the follow standard practices to market their works. In advance of publication, publishers create catalogs describing their new works for the season or span. These catalogs are distributed to wholesale and major retail accounts. A sales force maintains active contact with these accounts to further promote the books and secure orders. Closer to the time of publication, publishers distribute press materials to interested members of the media in an effort to garner articles or other attention for the book, including potential interviews with the author. Review copies are sent to the editors at prospective review media, including academic publications in the field. Publishers and their authors promote the book online, including on the publisher's website. Publishers also run advertisements for the work and may send the author on an author tour. In the academic world, it is also standard practice to promote and display publications at scholarly conferences in the relevant field, since scholars are a major market for academic publications. Often such conferences have an entire "book hall" filled with booths from competing publishers. Such marketing efforts are the only practical means for the public to learn that a book is being published and to secure distribution through the various wholesale and retail channels.

OFAC's Recent Rulings

42. Prior to September 2003, there was very little awareness in the publishing community of the OFAC Information Regulations. Many were aware that Congress had protected information from trade embargoes and thought no further about the subject. I am not

aware of any instance after passage of the Berman Amendment and before September 2003 in which OFAC invoked its regulations in connection with a book or journal, including those published by AAUP's members or the mainstream trade publishers.

43. The climate changed radically in 2003. In an interpretive ruling dated September 15, 2003, OFAC ruled that an American entity could not enter into a licensing agreement with an Iranian publisher for publication of books in Iran, where the Iranian publisher would translate the works into Farsi, prepare the text and artwork for printing, and promote and sell the books. OFAC ruled that, "The engagement of a publisher in Iran to perform the services described in the license agreement, including but not limited to preparing artwork for publishing, and promoting the works in Iran, would constitute substantive or artistic alteration or enhancement of the materials being exported and the provision of marketing services....It would be contrary to current licensing policy to authorize such transactions."¹

44. In an interpretive ruling dated September 26, 2003, OFAC rejected an American entity's request to play a role in publishing a book in the United States written by an Iranian author.² OFAC stated flatly that engaging Iranian authors to create new works is not allowed. OFAC specified that essential editorial practices are prohibited:

[Y]our assistance in editing and preparation for publication of manuscripts... including activities such as reordering of paragraphs or sentences, correction of syntax, grammar, and replacement of inappropriate words would result in a substantively altered or enhanced product, and is therefore prohibited ... unless specifically licensed.

¹ A copy of the letter dated September 15, 2003 is annexed to the declaration of Marc H. Brodsky ("Brodsky Dec.") as Exhibit A.

² A copy of the letter dated September 26, 2003, is annexed to the Brodsky Dec. as Exhibit B.

It further ruled that “the creation of illustrations for a person in Iran is not permitted as it constitutes the prohibited exportation of services.”

45. In its most sweeping paragraph, OFAC spelled out its prohibition on marketing and the inevitable effect of these restrictions:

The exemption for information and informational materials does not authorize the provision of marketing or business consulting services Inherent in the publication of a book are marketing, distribution, artistic, advertising and other services not exempt from the prohibitions of §§560.201, 560.204, and 560.206 [of the Iranian Trade Sanctions]. Thus, you may not publish books in the United States on behalf of a person in Iran.”

All those “services,” both editorial and marketing, are activities that AAUP’s member engage in as a necessary part of publishing.

46. Also in September 2003, OFAC issued an interpretive ruling in response to an inquiry from the Institute of Electrical and Electronics Engineers (“IEEE”), an organization that publishes several scholarly journals. OFAC again repeated that “collaborating on and editing manuscripts submitted by persons in Iran . . . may result in a substantively altered or enhanced product, and is therefore prohibited . . . unless specifically licensed.” OFAC’s interpretive ruling for IEEE listed the same examples of prohibited editorial practices (reordering paragraphs or sentences, etc.) and stated specifically that IEEE’s facilitation of a peer review process, including the selection of reviewers for the purpose of working with Iranian authors in a way that substantively enhances manuscripts, is prohibited: “U.S. persons may not provide the Iranian author substantive or artistic alterations or enhancements, and [IEEE] may not facilitate the provision of such alterations or enhancements.” OFAC’s letter indicated that a U.S. publisher “would not be prohibited from accepting camera-ready copies of manuscripts from persons in

Iran for its journal” – thus emphasizing the very narrow window of permissible publishing.³

47. IEEE submitted additional information to OFAC, and in a letter dated April 2, 2004, OFAC began a chain of inconsistent rulings marked more by sophistry than fidelity to the regulations. In April, 2004, OFAC ruled that IEEE could engage in a limited peer review process described in IEEE’s submissions, but only because the process started with completed manuscripts -- not new or commissioned material -- and involved only “general guidance and suggestions” from reviewers and editors, which OFAC deemed not to result in “substantive[] re-writ[ing] or revis[ion of] the manuscript” or “ a collaborative interaction . . . resulting in co-authorship or the equivalent thereof.” In an about-face, OFAC further stated that routine copy editing, such as correcting grammar, changing font sizes, and repositioning illustrations, was permitted.⁴

48. OFAC’s April 2 letter is inconsistent with its regulations and cannot be squared with the reality of professional and scholarly publishing. Even the peer review process described by IEEE, which OFAC condoned, results in “the substantive or artistic alteration or enhancement” of the work, which the OFAC Information Regulations forbid.

49. Moreover, the April ruling was of little assistance to AAUP’s members, and did nothing to reduce the chilling effect on book publishers resulting from the September 2002 interpretive rulings. The peer review process of most scholarly publishers, including AAUP’s members, goes beyond the very limited process described in OFAC’s letter to IEEE. Further, as described above, AAUP’s members do not in any way limit themselves to the publication of completed manuscripts. Rather, their publishing often involves the solicitation of new

³ A copy of the letter dated September 30, 2003, is annexed to the Brodsky Dec. as Exhibit C.

⁴ A copy of the letter dated April 2, 2004, is annexed to the Brodsky Dec. as Exhibit D.

manuscripts or a close collaboration to substantially revise a work, which the regulations and letters would forbid. Further, with AAUP's members, the peer review and editing processes most often include "substantive[] re-writ[ing] or revis[ion of] the manuscript." Additionally, AAUP's members regularly publish works that are "a collaborative interaction . . . resulting in co-authorship or the equivalent thereof" -- including books such as those outlined in the declarations of Daniel J.J. Ross and Scott Mahler, as well as many journal articles in scientific fields.

50. The IEEE rulings also did nothing to assuage AAUP's members' concerns regarding the ban on marketing books -- including those previously published abroad. OFAC informed IEEE that "although the provision of marketing or business consulting services is generally not permitted as incidental to the importation . . . of informational materials, in the context of a publication of an article in an established academic journal, efforts by the U.S. Entity to market its academic journal would be permitted as incidental to the importation . . . of the information and informational materials where such marketing services are not provided to or on behalf of individual contributors and are independent of the individual submissions." Brodsky Dec. Ex. C. While an academic journal may market the journal as a whole as opposed to the individual articles contained therein, a book publisher must market the book itself -- the very work authored by the "individual contributor" in the restricted country. Thus, the recent OFAC letters reinforce that book publishers may not market any work written by an author in the restricted countries -- including both new works and previously published works -- and thus are effectively barred from publishing any such books.

51. The IEEE rulings received widespread press coverage and become well known within the scholarly publishing community. As awareness spread, AAUP's members put on hold

or refrained from publishing many important works subject to the Information Regulations for fear of violating the law and risking civil and criminal penalties. Several examples are set forth in the attached declarations of AAUP's members. As these declarations evidence, the OFAC Information Regulations constitute a very real, direct impairment to the First Amendment rights of AAUP's members, as well as the American public.

52. Most recently, on July 19, 2004, OFAC issued a letter in response to an inquiry from the American Society of Newspaper Editors, indicating that a newspaper may edit a work from a country subject to sanctions by deleting superfluous text; correcting grammar, syntax or spelling errors; and substantively editing it "to make the work more understandable to the newspaper's readers and to make the work conform to the newspaper's editorial standards." Resorting to pure sophistry, OFAC declared that such "substantive editing" "would not constitute substantive or artistic alteration or enhancement of the article or commentary," which the regulations prohibit.⁵ OFAC's letter does not explain why "substantive editing" does not constitute "substantive alteration or enhancement" or why newspapers should be treated differently than other publishers. AAUP's members strongly object to any differential treatment between newspaper publishers, and publishers of books and journals.

53. Scholarly publishers cannot rely on the erratic, self-contradictory and ultimately nonsensical interpretive rulings OFAC has issued regarding editorial alterations. Taken together, the regulations and the recent interpretive rulings do not adequately or reliably inform publishers which editorial activities are prohibited. By their terms, the OFAC Information Regulations prohibit "substantive or artistic alteration or enhancement" of new works or works already created. The interpretive rulings are all over the map. They do not bind

⁵ A copy of the letter dated July 19, 2004, is annexed to the Brodsky Dec. as Exhibit F.

OFAC in connection with other parties and may be withdrawn at any time. And, OFAC's limited approvals are inconsistent with the apparent meaning of the words in its regulations.

54. Moreover, OFAC has not stepped back by an inch from the specific prohibitions in the OFAC Information Regulations against bringing new works into being by authors in the affected countries, paying the authors for those works, and marketing or promoting works authored in the restricted countries. I am aware of no statements issued by OFAC altering those prohibitions, which drastically interfere with AAUP's members' abilities to publish in accordance with their publishing programs. Likewise, the recent rulings have only reinforced OFAC's prohibition against collaborations, which creates a significant impediment to AAUP's members and the authors with whom they work.

The Licensing Provisions

55. I have been informed that publishers may apply to OFAC for special licenses to publish works that would otherwise violate the regulations. The OFAC regulations provide no guidelines or rules that govern the discretion of OFAC in granting such licenses, including no provisions setting forth a time limit for OFAC's response. AAUP's members object to such licensing procedures on several grounds.

56. The notion of seeking government approval prior to publication of a book is wholly contrary to the principles of this nation and AAUP's members. Such a licensing scheme constitutes a classic prior restraint and raises all the concerns long associated with prior restraints, which were forcefully condemned by this nation's forefathers. It raises the specter of the government favoring some speakers or publishers over others and of self-censorship by publishers angling for governmental approval. Such fears are made even worse by the absence of clear, discernable standards for the issuance of specific licenses in the OFAC regulations.

57. Moreover, such fears are not merely academic. OFAC has permitted newspaper publishers to engage in editing practices forbidden to others. According to press reports (attached hereto as Exhibit G), OFAC reversed its own prior determination and granted a special license to musician Ry Cooder to record an album of Cuban music after President Clinton exerted pressure on his behalf. The government should not be determining which First Amendment-protected works should be allowed.

58. If OFAC's licensing scheme were followed, it would also interfere with AAUP's members' publication plans by creating delay. OFAC's letter dated September 26, 2003, responded to a request dated April 18, 2002. Brodsky Dec. Ex. B IEEE's communications with OFAC spanned more than a year. Books and journal articles are often timely -- whether they be publications on scientific research or discussions of public affairs -- and a system adding unpredictable delays would harm scholarly publishers and the readers of their publications.

Conclusion

59. The OFAC Information Regulations significantly interfere with the publishing programs of American scholarly publishers, to their detriment and the detriment of the reading

public. AAUP respectfully requests that the Court enjoin enforcement of the OFAC Information Regulations for the reasons set forth in the accompanying memorandum of law, including that they exceed the authority granted to OFAC under the Trading With the Enemy Act and The International Emergency Economic Powers Act, and violate the First Amendment to the Constitution.

Dated: September 21, 2004



Peter Givler

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SUBJECT AREA GRID

This eight-page grid indicates the subject areas in which each press has a particularly strong interest.

Some presses are prepared to consider manuscripts of outstanding quality in areas other than those listed. For more detailed descriptions of press editorial programs, consult the individual listings in the "Directory of Members" section and contact the presses that interest you. (See also "On Submitting Manuscripts" in this directory.)

Exhibit C

Indonesia's Transformation and the Stability of Southeast Asia
Angel Rabasa and Peter Chalk
RAND. 2001

The Military and Democracy in Indonesia: Challenges, Politics, and Power
Angel Rabasa, John Haseman
RAND, 2002

Islam and the Malay-Indonesian World: Transmission and Responses
Peter G. Riddell
University of Hawaii Press. 2001

The Vanguard of the Islamic Revolution: The Jama'at-i Islami of Pakistan
Seyyed Vali Rez Nasr
University of California Press. 1996

The New Central Asia: The Creation of Nations
Olivier Roy
New York University Press. 2000

Civil Society in Central Asia
Editors M. Holt Ruffin and Daniel Waugh
University of Washington Press. 1999

A History of Inner Asia
Svat Soucek
Cambridge University Press. 2000

The Alluring Target: In Search of the Secrets of Central Asia
Kenneth Wimmel
University of Washington Press. 1996

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Iran and Iraq

Tortured Confessions: Prisons and Public Recantations in Modern Iran
Ervand Abrahamian
University of California Press. 1999

Being Modern In Iran
Fariba Adelkhah
Columbia University Press. 2000

The Waiting List: An Iraqi Woman's Tales of Alienation
Daisy Al-Amir
University of Texas Press. 1994

Iran, Islam and Democracy: The Politics of Managing Change
Ali M. Ansari
A Royal Institute of International Affairs book
Brookings Institution Press. 2001

Parliamentary Politics in Revolutionary Iran
Bahman Baktiari
University Press of Florida. 1996

The Eagle and the Lion: The Tragedy Of American-Iranian Relations
James Bill
Yale University Press. 1989

Reinventing Khomeini: The Struggle for Reform in Iran
Daniel Brumberg
University of Chicago Press. 2001

Iran's Security Policy in the Post-Revolutionary Era
Daniel L. Byman, Shahram Chubin, Anoushiravan Ehteshami, and Jerrold Green
RAND. 2001

Confronting Iraq: U.S. Policy and the Use of Force Since the Gulf War
Daniel L. Byman and Matthew Waxman
RAND. 2000

Political Violence and Stability in the States of the Northern Persian Gulf
Daniel L. Byman and Jerrold D. Green
RAND. 1999

Origins of Social Democracy in Modern Iran
Cosroe Chaqueri
University of Washington Press. 2001

In the Shadow of the Ayatollah: A CIA Hostage in Iran
William J. Daugherty
Naval Institute Press. 2001

The Iranian Revolution: Its Global Impact
John L. Esposito
University Press of Florida. 1990

Ally to Adversary: An Eyewitness Account of Iraq's Fall from Grace
Richard Francona
Naval Institute Press. 1999

Iranian Intellectuals in the Twentieth Century
Ali Gheissari
University of Texas Press. 1997

Great Britain and Reza Shah: The Plunder of Iran, 1921-1941
Mohammad Gholi Majd
University Press of Florida. 2001

Resistance to the Shah: Landowners and Ulama in Iran
Mohammad Gholi Majd
University Press of Florida. 2001

The Continuing Storm: Iraq, Poisonous Weapons, and Deterrence
Avigdor Haselkorn
Yale University Press. 1999

The United Nations, Iran, and Iraq
Cameron R. Hume
Indiana University Press. 1994

Roots Of Revolution: An Interpretive History of Modern Iran
Nikki Keddie
Yale University Press. 1981

Republic of Fear: The Politics of Modern Iraq
Kanan Makiya
University of California Press. 1998

Islam and Gender: The Religious Debate in Contemporary Iran
Ziba Mir-Hosseini
Princeton University Press. 1999

Arming Iraq: How the U.S. and Britain Secretly Built Saddam's War Machine
Mark Phythian
Northeastern University Press.

The Iran-Iraq War: The Politics of Aggression
Farhang Rajaee
University Press of Florida. 1993

Iranian Perspectives on the Iran-Iraq War
Farhang Rajaee
University Press of Florida. 1997

Iran's Revolution
Editor R. K Ramazani
Indiana University Press. 1990

Satan's Stones
Moniru Ravanipur
University of Texas Press. 1996

Borders and Brethren: Iran and the Challenge of Azerbaijani Identity
Brenda Shaffer
ISBN 0-262-19477-5
The MIT Press, 2002

A History of Iraq
Charles Tripp
Cambridge University Press. 2000

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Egypt, Jordan, Lebanon, Syria, and Turkey

Planning the Family in Egypt: New Bodies, New Selves
Kamran Asdar Ali
University of Texas Press. 2002

The Women's Awakening In Egypt: Culture, Society, and the Press
Beth Baron
Yale University Press. 1997

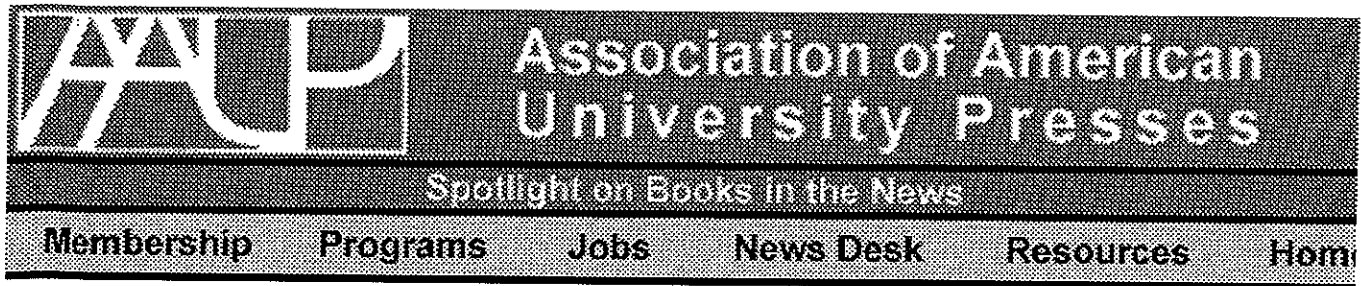
Rethinking Modernity and National Identity in Turkey
Sibel Bozdogan and Resat Kasaba, editors
University of Washington Press. 1997

The Israeli-Syrian Peace Talks: 1991-1996 and Beyond
Helena Cobban
United States Institute of Peace Press. 1999

Houses behind the Trees
Mohamed El-Bisatie
University of Texas Press. 1998

Culture and Conflict in Egyptian-Israeli Relations
Raymond Cohen
Indiana University Press. 1990

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Iraq's Regional Relations
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 The Iraqi Kurdish Population

Alternatives for Resolution
 Preventive Diplomacy
 Military Strategy and Tactics

*Highlighted author names are linked to a Journalists' Resources entry.

**G stands for general interest
 **S stands for special interest

US and International Policy Towards Iraq
 General
 The Gulf War
 The Economic Sanctions

General

Allies Divided: Transatlantic Policies for the Greater Middle East
 Editors Robert D. Blackwill and Michael Sturmer
 The MIT Press, 1997

JOURNALISTS' RESOURCES

Contact information for writers, scholars and editors available to talk with members of the media on this topic and their work.

Confronting Iraq: U.S. Policy and the Use of Force Since the Gulf War
Daniel L. Byman, Matthew Waxman
ISBN 0-8330-2813-8
RAND, 2000
G

The Persian Gulf in the Coming Decade: Trends, Threats, and Opportunities
Daniel L. Byman and John R. Wise
ISBN 0-8330-3206-2
RAND, 2002

America's Role in Nation-Building: From Germany to Iraq
James Dobbins, John G. McGinn, Keith Crane, Seth G. Jones, et al.
ISBN 0-8330-3460-X
RAND, 2003
G

Ally to Adversary: An Eyewitness Account of Iraq's Fall from Grace
Richard Francona
Naval Institute Press, 1999

Camp Colt to Desert Storm: The History of U.S. Armored Forces
George F. Hofman and Donn A. Starry, editors
ISBN 0-8131-2130-2
University Press of Kentucky, 1999
G

Managing New Developments in the Gulf
Editor Rosemary Hollis
A Royal Institute of International Affairs book
Brookings Institution Press, 2001

The United Nations, Iran, and Iraq
Cameron R. Hume
Indiana University Press, 1994

Undeclared War: Twilight Zone of Constitutional Power
Edward Keynes
Penn State Press, 1991

Rogue States and U.S. Foreign Policy
Robert S. Litwak
The Woodrow Wilson Center Press, 2000

America Recommitted: A Superpower Assesses Its Role in a Turbulent World
Donald E. Nuechterlein
ISBN 0-8131-9005-3
University Press of Kentucky, 1991
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Behind the Invasion of Iraq
The Research Unit for Political Economy
ISBN 1-58367-093-9
Monthly Review Press, 2003
Distributed by New York University Press

Friendly Fire: The Accidental Shootdown of U.S. Black Hawks over Northern Iraq
Scott A. Snook
Princeton University Press, 2000

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The Gulf War

A Review of Scientific Literature as it Pertains to Gulf War Illnesses: Vol.5: Chemical and Biological Agents
William S. Augerson
RAND. 2000

Meanings of War and Peace (including a case study of the Gulf War)
Francis A. Beer
ISBN 1-58544-123-6 (cloth); 1-58544-124-4 (paper)
Texas A & M Press

The Arab World After Desert Storm
Muhammad Faour
United States Institute of Peace Press. 1993

Shifting Lines in the Sand: Kuwait's Elusive Frontier with Iraq
David H. Finnie
Harvard University Press. 1992

The Gulf Conflict, 1990-1991: Diplomacy and War in the New World Order
Lawrence Freedman and Efraim Karsh
Princeton University Press. 1995

The Middle East after Iraq's Invasion of Kuwait
Robert O. Freedman
University Press of Florida. 1993

Desert Victory: The War for Kuwait
Norman Friedman
ISBN 1557502544
Naval Institute Press, 1992
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Storms over the Iraq: Air Power and the Gulf War
Richard P. Hallion
ISBN 1-56098-723-5
Smithsonian Institution Press

Presidential Decisions for War
Gary R. Hess
The Johns Hopkins University Press, 2001

The Gulf War and the New World Order: International Relations of the Middle East
Tareq Y. Ismael and Jacqueline S. Ismael
University Press of Florida. 1994

Revolution in Warfare: Air Power in the Persian Gulf
Thomas A. Keaney and Eliot Cohen
ISBN 1557501319
Naval Institute Press, 1995
S

War in the Gulf, 1990-91: The Iraq-Kuwait Conflict and its Implications
Majid Khadduri and Edmund Ghareeb
ISBN 0195149793
Oxford University Press, 2001

Shield and Sword: The United States Navy in the Persian Gulf War
Edward J. Marolda
ISBN 1557504857

Naval Institute Press, 2001
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Tip of the Spear: U.S. Marine Light Armor in the Gulf War
G. J. Michaels
ISBN 1557505993
Naval Institute Press, 1998
S

Uncritical Theory: Postmodernism, Intellectuals, and the Gulf War
Christopher Norris
University of Massachusetts Press, 1992

The Political Psychology of the Gulf War: Leaders, Publics, and the Process of Conflict
Editor Stanley A. Renshon
ISBN 0-8229-5495-8
University of Pittsburgh Press, 1993
S

Hornets over Kuwait
Jay A. Stout
ISBN 1557508356
Naval Institute Press, 1997
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Baghdad Express: A Gulf War Memoir
Joel Turnipseed
ISBN 0873514505
Minnesota Historical Society Press/Borealis Books, 2003
G

The Eyes of Orion: Five Tank Lieutenants in the Persian Gulf War
Alex Vernon with Neal Creighton Jr., Greg Downey, Rob Holmes, and Dave Trybula
ISBN 0-87338-633-7 (cloth); ISBN 0-87338-715-5 (paper)
The Kent State University Press, 1999
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The Economic Sanctions

Economic Warfare: Sanctions, Embargo Busting, and Their Human Cost
R. Thomas Naylor
ISBN 1-55553-499-8
Northeastern University Press, 2001

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Iraq's History and Culture

General History
Contemporary Political, Social, and Religious Institutions in Iraq
Arts, Literature, and Language

General History

Turmoil in the Middle East
Berch Berberoglu
ISBN 0-7914-4412-0

State University of New York Press, 1999
G

Inventing Iraq: The Failure of Nation-Building and a History Denied
Toby Dodge
ISBN 0-231-13166-6
Columbia University Press, 2003
G

The Politics of Regional Trade in Iraq, Arabia, and the Gulf, 1745-1900
Hala Fattah
ISBN 0-7914-3114-2
State University of New York Press, 1997
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The Making of Iraq, 1900-1963
Samira Haj
ISBN 0-7914-3242-4
State University of New York Press, 1997
G

A History of the Arab Peoples, Second Edition
Albert Hourani and Malise Ruthven
ISBN 0-674-01017-5
Harvard University Press, October 2002
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The Shi'is of Iraq
Yitzhak Nakash
ISBN 0-691-11575-3
Princeton University Press, 2003

The Final Sack of Nineveh: The Discovery, Documentation, and Destruction of King Sennacherib's Throne Room at Nineveh, Iraq
John M. Russell
ISBN 0-300-07418-2
Yale University Press, 1998
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Mosul before Iraq
Sarah D. Shields
ISBN 0-7914-4488-0
State University of New York Press, 2000
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Daniel C. Snell
ISBN 0-300-06615-5
Yale University Press, 1997
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Baghdad Sketches
Freya Stark
ISBN 0-8101-6023-4
Northwestern University Press, 1992
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A History of Iraq
Charles Tripp
Cambridge University Press, 2002

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Saddam's Word: Political Discourse in Iraq

Ofra Bengio
ISBN 0195151852
Oxford University Press, 2002

Modern Tyrants: The Power and Prevalence of Evil in Our Age

Daniel Chirot
Princeton University Press

Rules and Rights in the Middle East: Democracy, Law, and Society

Editos Ellis Goldberg, Resat Kasaba, and Joel S. Migdal
ISBN 0-295-97287-4
University of Washington Press, 1993

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Republic of Fear: The Politics of Modern Iraq

Kanan Makiya
University of California Press, 1998

An Introduction to Shi' Islam: The History and Doctrines of Twelver Shi'ism

Moojan Momen
ISBN 0-300-03531-4
Yale University Press, 1987

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The Waiting List: An Iraqi Woman's Tales of Alienation

Daisy Al-Amir
ISBN 0-292-79067-8
University of Texas Press, 1994

Love, Death, and Exile: Poems Translated from Arabic, Bilingual Edition

Abdul Wahab Al-Bayati; translated by Bassam K. Frangieh
ISBN 1589010043
Georgetown University Press, 2004

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Modern Iraqi Arabic: A Textbook (includes 6 audio CDs)

Yasin M. Alkalesi
ISBN 0-87840-788-X
Georgetown University Press, 2001

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Exile from Exile

Nancy E. Berg
ISBN 0-7914-2980-6
State University of New York Press, 1996

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A Dictionary of Iraqi Arabic: English-Arabic, Arabic-English

English-Arabic edited by B.E. Clarity, Karl Stowasser, Ronald G. Wolfe
Arabic-English edited by D.R. Woodhead and Wayne Beene
ISBN 0-87840-136-9

Georgetown University Press, 2003

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Yasir Suleiman
ISBN 0-87840-395-7
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Yasser Tabbaa
ISBN 0-295-98133-4 (paper); 0-295-98125-3 (cloth)
University of Washington Press, 2001
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The Middle East Military Balance 1999-2000
Editors Shlomo Brom and Yiftah Shapir
The MIT Press, 1999

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Avigdor Haselkorn
ISBN 0-300-07582-0
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Peter R. Lavoy, Scott D. Sagan, and James D. Wirtz
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The Iraqi Kurdish Population

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Malik Mufti
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Turkish Foreign Policy Since the Cold War
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University of Washington Press, 2002
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Yale University Press, 1981

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Farhang Rajaee
University Press of Florida, 1993

Iranian Perspectives on the Iran-Iraq War
Farhang Rajaee
University Press of Florida, 1997

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The Kurdish Nationalist Movement in the 1990s: Its Impact on Turkey and the Middle East
Robert Olson
University Press of Kentucky

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Military Strategy and Tactics

Preventive Diplomacy

Conflict Prevention: Path to Peace or Grand Illusion?
Editors David Carment and Albrecht Schnabel
ISBN 9280810812
United Nations University Press, 2003
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The New Sovereignty: Compliance with International Regulatory Agreements
Abram Chayes, Antonia Handler Chayes
ISBN 0-674-61783-5
Harvard University Press, 1998
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Re-Envisioning Peacekeeping: The United Nations and the Mobilization of Ideology
Francois Debrix
ISBN 0-8166-3236-7 (cloth); 0-8166-3237-5 (paper)
University of Minnesota Press, 1999
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Architects of Intervention: The United States, the Third World, and the Cold War, 1946-1968
Zachary Karabell
ISBN 0-8071-2307-2 (cloth); 0-8071-2341-2 (paper)
Louisiana State University Press, 1999
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War and Reconciliation: Reason and Emotion in Conflict Resolution
William J. Long and Peter Brecke
ISBN 0-262-12254-5
The MIT Press, 2003
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Preventing Violent Conflicts: A Strategy for Preventive Diplomacy
Michael Lund
United States Institute of Peace Press, 1996

U.S. Foreign Policy in the Twenty-First Century: The Relevance of Realism
Robert J. Myers
ISBN 0-8071-2345-5
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Military Persuasion: Deterrence and Provocation in Crisis and War
Stephen Cimbala
Pennsylvania State University Press, 1994

Seapower as Strategy: Navies and National Interests
Norman Friedman
ISBN 1557502919
Naval Institute Press, 2001
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Terrorism, Afghanistan, and America's New Way of War
Norman Friedman
ISBN 1591142903
Naval Institute Press, 2003
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How Effective Is Strategic Bombing? Lessons Learned from World War II to Kosovo
Gian P. Gentile
New York University Press, 2001

Stray Voltage: War in the Information Age
Wayne M. Hall
ISBN 1591143500
Naval Institute Press, 2003
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Jonathan House
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Air Warfare in the Missile Age
Lon O. Nordeen
ISBN 1-58834-083-X
Smithsonian Institution Press

Bombing to Win: Air Power and Coercion in War
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Calendar; Entertainment Desk

With Help From Up High, Cooder's Back in Cuba Politics * Musician--and donor to Hillary Rodham Clinton--Ry Cooder got a permit in the Clinton administration's last days.

JAY HANCOCK
BALTIMORE SUN

WASHINGTON -- Musician Ry Cooder, who was once fined by the U.S. government for traveling to Cuba without permission to collaborate with the acclaimed musicians known as the Buena Vista Social Club, is back in Cuba recording music.

And this time, thanks to last-minute intervention from top Clinton administration officials, he's legal.

Cooder, a singer, guitarist and songwriter, who with his Cuban colleagues won a Grammy Award in 1998, received U.S. permission to make new recordings in Cuba after then-Secretary of State Madeleine Albright and Sandy Berger, former President Bill Clinton's national security advisor, weighed in on his behalf in the last days of the administration, U.S. officials say.

Although his newest project is probably good news for fans of Cuban music, the high-level attention given to his case within the government raises new questions about the Clinton administration's final days in power.

Having encountered trouble last year in obtaining a license from the Treasury Department for a new trip to Cuba, Cooder gave \$10,000 to Hillary Rodham Clinton's senatorial campaign in September.

On Jan. 17, three days before President Clinton left office, Cooder was granted the license.

Representatives of Sen. Hillary Rodham Clinton and former administration officials said there was no connection between Cooder's campaign contributions and the Treasury Department's approval of a new Cooder trip.

"She was not involved in this matter," said Karen Dunn, a spokeswoman for the senator.

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Cooder's California-based lawyer also denied a link, saying the musician supported Sen. Clinton generally as a candidate and expected no personal gain from the contribution.

"Ry's made donations to a number of politicians and done it over a number of years," said the lawyer, Candice Hanson. "Hillary Clinton--I bet she doesn't know who Ry Cooder is. As far as I know, she doesn't have anything to do with this."

Cooder has contributed to the campaigns of both California Democratic senators, Barbara Boxer and Dianne Feinstein. But those donations did not approach the size of the Hillary Clinton contribution, according to federal records.

Campaign finance specialists said that Cooder's donation and the subsequent satisfaction he received from the administration are troubling.

"This is the problem with the whole system--it calls all these decisions into question," said Lawrence Noble, executive director of the Center for Responsive Politics in Washington. "The decision may have been made for very legitimate and impartial reasons. But it leaves one to wonder what was his motive in giving the contribution."

More than a year ago, Cooder was fined \$25,000 by the Treasury Department for failing to obtain a U.S. license for his first recording trip to Cuba in 1996, which resulted in the Grammy-winning "Buena Vista Social Club" album. The fine has not been previously disclosed.

Because of its repressive Communist regime, Cuba has been under a strict U.S. embargo since the 1960s. Though legal travel to Cuba by Americans has skyrocketed in recent years, Cooder's January 2000 application to make a new recording trip languished for months in the Treasury Department.

A second unlawful trip might have subjected Cooder to an even higher fine and possible criminal penalties. But Hanson, his lawyer, said the guitarist was eager to resume accompanying and recording such aging Cuban virtuosos as Ibrahim Ferrer, who starred on the first "Buena Vista" album.

In August, the government said it would approve Cooder's application so long as he earned no money from any new Cuban projects, according to Hanson and a congressional official. Cooder rejected that offer. He reapplied for a travel permit Nov. 7.

As the final days of the administration approached, Cooder's application had still not been approved. But both Berger and Albright were told of his case and, through intermediaries, informed the Treasury Department's Office of Foreign Assets Control of their support, according to a former senior administration official.

"None of the policymakers were aware of any fund-raising contribution in this situation," said the official, who spoke on condition of anonymity. "The

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secretary did not talk to OFAC. Sandy Berger did not talk to OFAC."

Brooke Anderson, a spokeswoman for Berger, said: "Ry Cooder wrote to Mr. Berger, and Sandy had a discussion with Secretary Albright about this, and they both thought it was a logical extension of the people-to-people contacts" promoted by the administration between Cuba and the United States.

Berger knew of no campaign contributions and did not discuss Cooder's travel request with Sen. Clinton, Anderson said. Berger might have mentioned Cooder to President Clinton, she said, but only in the context of dozens of other tasks that had to be completed before the end of the term.

Albright and her spokeswoman could not be reached for comment.

The Clinton administration has been sharply criticized for several actions taken in its final days, especially for the former president's pardon of Marc Rich, a fugitive billionaire commodities trader.

Rich was indicted in 1981 on charges of tax evasion, fraud and racketeering; he fled to Switzerland to avoid prosecution. His former wife, Denise Rich, has donated hundreds of thousands of dollars to Democrats, including \$7,000 to Sen. Clinton's campaign.

Cooder had other government officials on his side in addition to those in the administration. Perhaps his biggest champion in Washington is Rep. Howard L. Berman (D-Mission Hills), who often takes an interest in intellectual property issues and who spearheaded a 1988 amendment that enabled the expansion of cultural contacts between Cuba and the United States.

*

"We were calling them in the State Department with great frequency" to urge approval of Cooder's travel application, said Gene Smith, Berman's chief of staff. The congressman "even called when he was out of the country."

Cooder has not contributed money to Berman's campaigns, federal records show.

At least part of the delay in approving Cooder's license had to do with differing opinions between Berman's office and Treasury officials over whether the visit would be allowed under the 1988 measure, she said.

And some of the urgency to approve the permit stemmed from the fear that the Bush administration would reject it, in a bow to anti-Castro Floridians who oppose such activity, she said.

"We saw this administration coming to an end and a president coming to power who owed everything to Florida," where Bush won the White House on a disputed election count, Smith said.

For his part, Cooder wasted no time in getting to his latest project. He left for Cuba immediately after the license was approved and is there now, planning

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to record with guitarist Manuel Galban and 73-year-old crooner Ferrer, Hanson said.

"He wanted to get the record in the can," Hanson said. "When this man thought [last year] that he couldn't record with these Cuban musicians again, he was devastated."

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PHOTO: Ry Cooder produced the Grammy-winning "Buena Vista Social Club." ;
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Tuesday, April 15, 2003

Back to Cuba, One More Time

By HARRY SIEGEL

Ry Cooder has had many musical incarnations. Though best known as a guitarist, if it makes music and isn't a brass or woodwind, the odds are Mr. Cooder can and has played it. Since forming the Rising Sons with Taj Mahal in 1965, he has gone from being a sideman for everyone from Captain Beefheart to the Rolling Stones (he taught Keith Richards how to play slide guitar) to recording under his own name to composing and performing soundtracks. In his present role as a world musicologist, he has produced and played on superb albums with Indian musician V.M. Bhatt and Kenyan guitarist Ali Farke Toure.

He is now probably best known, however, for his work assembling, producing, and playing with the Cuban super-group, the Buena Vista Social Club. The multi-million-selling eponymous album, along with the Wim Wenders-directed documentary of the same name, started an international Cuban music craze. Mr. Cooder returned to Cuba last year to record two final BVSC albums, bringing to a close an unlikely story of musical discovery, subsequent corruption, and partial redemption.

The saga began in 1996, when Mr. Cooder (who had brought home hundreds of Cuban albums following a surreptitious 1976 jazz tour featuring Earl Hines and Dizzy Gillespie) traveled to Cuba to record a meeting of Cuban and African musicians. Passport problems kept the Africans from joining the session, which he then reshaped into a meeting of old Cuban masters who had been largely forgotten since Castro's ascendance in 1959.

Before the revolution, Cuba's musical scene had been among the world's most fruitful, cross-pollinating such homegrown forms as the son and the bolero with everything from jazz to doo-wop to surf guitar. The original Buena Vista Social Club was a private club in Havana where many musicians - including bandleader and "I Love Lucy" co-star Desi Arnez - got their start. The Communist revolution on the island stranded most of the era's musicians, and left them unaffected by the music developments of the next 40-odd years.

Before Mr. Cooder came looking, pianist Ruben Gonzalez no longer even had an instrument, singer Ibrahim Ferrer was shining shoes to make a living, and many of the rest of the assembled musicians were in similar straits. All of them were

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largely forgotten. Mr. Cooder gathered up the musicians and recorded three albums during his trip, "Buena Vista Social Club," "A Toda Cuba Le Gusta" by the Afro-Cuban All Stars, both with many of the same musicians, and "Introducing ... Ruben Gonzalez." (Mr. Gonzalez, who was represented on all three of these albums, plays nothing short of the most impressive Latin piano I've ever heard.)

The music was a fantastic discovery for most listeners, and BVSC became first a musical phenomenon and then a brand. But the albums that followed from Compay Segundo, Omara Portuondo, Eliades Ochoa, Orlando "Cachaito" Lopez, and Mr. Ferrer seemed more to capitalize on the success of the first three albums than to build on its accomplishment.

Bolero singer Mr. Ferrer emerged as the biggest star due to Mr. Wenders's film, which, despite its name, was about the making of Mr. Ferrer's first album, "Buena Vista Social Club Presents Ibrahim Ferrer." That album, produced by Mr. Cooder during his a return visit in 1998, consists largely of Boleros with strings and electric guitar accompaniment from Cuban surf/doo-wop guitarist Manuel Galban and Mr. Cooder himself, and is a tremendous step backward from the three that started the craze. For the first time, the purists who had objected to Mr. Cooder's participation in these sessions seemed to have a point, as the music came across is an inauthentic hybrid and, worse, quite dull.

Two years later, Mr. Cooder's request to visit Cuba was turned down. His expeditions were determined to have violated the U.S. government's ban on travel (he says he thought cultural exchanges were exempt), and he was fined \$25,000. This seemed to mark the end of the story until President Clinton, in one of his last acts in office, granted Mr. Cooder a one-year exemption.

Mr. Cooder used this free pass to record two more albums: "Buenos Hermanos" (79650) with Mr. Ferrer and "Mambo Sinuendo" (79691) with Manuel Galban. These are the first albums to be released on Cooder's new Perro Verde label (distributed by Nonesuch). They suggest Mr. Cooder may have been confronted with a choice between reiteration or commercialization.

"Mambo Sinuendo" is a partly successful attempt to find a third way, described by Mr. Cooder as how "a Cuban electric guitar band might reinterpret the atmosphere of the 50s ... a band that never was, playing ultra high-grade jukebox music." He produced the album and plays guitar on every track while also contributing on steel guitar, electric bass, vibes, and tres. He and Mr. Galban are joined by fellow-BVSC alumni "Cachaito" on bass, Miguel Diaz on congas, and Mr. Cooder's son Joachim on percussion.

Mr. Galban has played his unique brand of surf guitar since the mid-1940s. He spent a decade with Los Zafiros, a doo-wop influenced Cuban group that was one of the most popular groups in the country's history (their classic recordings were collected in the fantastic 1999 Nonesuch release "Bossa Cubana"). The new album is almost entirely instrumental. Throughout, the rhythm section wobbles, wiggles, and sways around the beat and one another infectiously. The musical effects of Cuba's isolation are never so clear as when one discovers that Mr. Galban, a big Duane Eddy fan who performs a brilliant "Secret Love," has never so much as heard of Django Reinhardt.

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Mr. Cooder has created an ideal atmosphere for transforming such naivete into an asset. Just listen to the two trade licks on the cut "Los Twangueros." Mr. Galban is 72 and Mr. Cooder 55, but this is, in the best sense, young men's music.

Messrs. Cooder and Galban both play on Mr. Ferrer's latest, which is much stronger than his first effort, but feels like a polished draft of something that was fundamentally no good the first time around. The core band here is "Cachaito" on bass; Mr. Galban on electric guitar, piano, and organ; Chucho Valdes on piano; and Mr. Diaz on congas, along with both Cooders and Jim Keltner, a Cooder associate for 30 years.

Guests (there are way too many) include accordionist Flaco Jimenez, ex-Coasters sax man Gil Bernal, trumpeters John Hassell and Herb Alpert, and the (vastly overrated) Blind Boys of Alabama. The album is full of strong and enjoyable songs, but they tend to blend together and become monotonous with repeated listens. The lack of strings is a step in the right direction, but there's nothing here Buena fans haven't heard before, done much better. Short the full BVSC band, or at least the Afro-Cuban All Stars, Mr. Ferrer's meek minimalism isn't enough to hold down a record.

Where Mr. Ferrer retreads safe ground, making accessible if thin romantic ballads and copying from his own text, Mr. Galban is making his own sort of music, animated by the weird and vibrant cross-breeding of Cuban acoustic and surf electric guitar. The Buena story ends then, with a cul de sac and a new beginning. It will be interesting to see what other music, if any, emerges from a generation of gifted musicians cut off from history.

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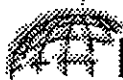


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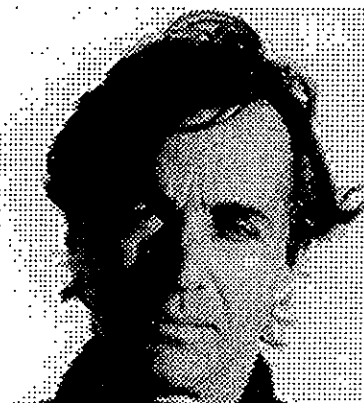
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Ry Cooder's Cuba Trip Questioned

Cold War still on in Washington - for man who was fined \$25,000 for recording in Cuba without a license

By Rob Kemp

February 07 - SonicNet - Ry Cooder has been known for more than 30 years as a consummate musician and as a passionate advocate and diligent archivist of music from around the world. But lately, some suggest that he can now be regarded as a member of a newly conspicuous and controversial group: donors to the campaign of U.S. Sen. Hillary Clinton who received favours from Bill Clinton in the waning hours of his presidency.



Last Saturday, guitarist/producer Cooder returned to the United States from Cuba, having recorded with local musicians in Havana. All obstacles to travelling and recording in Cuba, which is under a strict, four-decade-old U.S. embargo, were removed due to the intervention of outgoing Clinton administration officials and the president himself.

Coincidentally or not, as he was encountering problems securing a license to record in Cuba last year, Cooder contributed \$10,000 to Hillary Clinton's victorious campaign to represent the state of New York in the Senate.

Cooder's dispensation and contribution have come to light in the context of Bill Clinton's exit from the White House, one that many maintain occurred under a cloud of impropriety. But others think any such connection is rubbish.

"Whatever one thinks of [Bill] Clinton's decisions to pardon certain people or to accept gifts, or relate favours granted for contributions received," said Rep. Howard Berman (D-California), "tying that to this decision to give Ry Cooder a license to record great ageing Cuban musicians is absolute nonsense." Berman is the author of a 1988 amendment to the Constitution allowing international cultural exchanges, even with countries under anti-democratic governments such as that of Cuba's leader, Fidel Castro.

Candace Hanson, Cooder's lawyer, did not return a call for comment at press time. Sen. Clinton's office has consistently denied any knowledge of Cooder's travelling woes and any connection.

Unlike the trip he made to the country in 1996 - which yielded 1997's massively popular, Grammy-winning Buena Vista Social Club album, and for which he was fined \$25,000 for recording there without a license - Cooder's most recent jaunt to Cuba was authorised by the U.S. State Department and licensed by the U.S. Treasury Department, according to the Baltimore Sun.

Initially, the State Department's Cuban Affairs section refused to approve Cooder's application, filed in January 2000, to return to Cuba. In August 2000, the Department specified that he could return but could not share in profits resulting from the sessions, which were conducted with guitarist Manuel Galban. Cooder did not accept, and re-applied in November, according to the Sun.

But in the same flurry of pardons and favours meted out to the likes of fugitive financier Marc Rich and first brother Roger Clinton, outgoing Secretary of State Madeleine Albright and National Security Adviser Samuel Barber interceded on Cooder's behalf on January 17, three days before President Bush's inauguration.

"It may very well be a coincidence," said Lawrence Nobles of the Center for Responsive Politics, a Washington, D.C., organisation focusing on campaign finance reform. "Mr. Cooder has given campaign contributions to other candidates (Democratic California Sens. Barbara Boxer and Dianne Feinstein), but nothing this large. What's more important is the problem with the whole system. You have something that appears suspicious: He was first fined for going to Cuba, he puts in an application, then contributes to Senator Clinton's campaign, and then his application is approved.

"It may very well be that it was approved for valid reasons, and nobody in the line for authorising the approval knew about the contribution," Nobles continued. "The problem here is that it looks like there may be [favouritism involved]."

Berman disagrees. "As long as we have a system of private financing of campaigns," he said, "one can always question the motivation for any official action. Carrying that logic to this decision is off-base."

"I have been involved in this case for [15] months, speaking to the State Department, the Treasury department and National Security Department," he said. "The reason this license wasn't granted sooner is about politics in Florida." The powerful Cuban-American community in the Miami area is viscerally anti-Castro, and is influential in perpetuating the embargo against Cuba.

"I believe that major policymakers like Albright and Berger thought it was crazy not to let him go down there and record musicians whom Castro kept from performing in front of their own people and to people around the world for years," he said.

If Berman offers any criticism regarding impropriety, he doesn't lay it at Cooder's door, opting instead for an address in Chappaqua, New York. "When you've done things that look suspicious, as occurred near the end of the [Clinton] administration, you end up tainting a lot of decisions made for straightforward, honest, noble purposes." Cooder plans to return to Havana in March to record with Ibrahim Ferrer, a vocalist prominently featured on Buena Vista Social Club.

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New vistas: Ry Cooder offers Cuban projects beyond the Buena Vista Social Club - record producer - Interview

Fernando Gonzalez

Back in 1997, no one in the music business would have predicted that a disc of neo-traditional Cuban music, recorded in Havana by an American producer and a group anchored by a handful of elderly Cuban musicians--the best of them little known or long forgotten--could be a hit.

But after a predictably sluggish start, Ry Cooder's Buena Vista Social Club (World Circuit/Nonesuch) caught fire and went on to sell an estimated 5.5 million copies worldwide. In the process, it became a phenomenon, relaunching careers, sparking new interest in Cuban music and creating its own cottage industry. Not only were there releases by Compay Segundo, Eliades Ochoa, Ruben Gonzalez, Omara Portuondo, Ibrahim Ferrer and Pio Leyva, the heart and soul of Buena Vista, but there has been a flurry of see-what-we-can-find-in-the-basement reissues and compilations of everything and anything related to traditional Cuban music by both small labels and conglomerates. And there have been numerous new products associated with what became a brand name, including a Buena Vista: The Next Generation, featuring relatives and descendants of the Buena Vista stars.

There was, however, no Buena Vista Social Club, Volume II. But Cooder had aspirations for a project of his own, and six years after the Buena Vista recording he has released Mambo Sinuendo (Nonesuch/Perro Verde). Recorded in Havana over a year, and featuring a group of Cuban and American musicians anchored by Cooder and Cuban pianist and electric guitarist Manuel Galban--once the music director of the doo-wop group Los Zafiros--Mambo Sinuendo is far from a follow-up to Buena Vista.

"Oh, no," says Cooder, speaking from his home near Los Angeles. "These records are all based on people. It's people who give you the idea. Compay Segundo, Ruben Gonzalez and Ibrahim Ferrer are old masters, and you are just there to help them do their thing. But if I want to do something myself, I need someone to do it with. So when I met Galban [at the sessions for Ferrer's album] I thought, here's something I can do. This is my guy; we're going to work together and we're going to have fun. You think only about this and the music and the idea. I don't worry about these other things because then you can get distracted."

Musically, he says, the record represents "an evolution in some ways, because after six years or so of being down in Cuba, I've learned a few things. And with Joachim (his son, a drummer who also participated in the Buena Vista sessions) we are all much more able to move around in the music, within the form. So I wanted to do something, but I don't sing in Spanish and I don't play the [Cuban] folk styles. It's not for me to do that.

"But Galban is like me. He's not traditional, plays electric guitar and plays in his own way. He's a rare bird, and we can have a sound and take a trip somewhere. Mambo Sinuendo is certainly an extension, a developmental thing; but mainly it was a chance to play with Galban, who is a stylist beyond Cuban music."

Galban, 73, reached at his hotel in Chicago where he was performing with Ferrer, chuckles as he recalls meeting Cooder. "I didn't know Ry personally, but I knew his soundtrack music," he says. "I met him at Egrem Studios [in Havana]. I remember that when I was tuning my guitar and tried it, he would bend down to try and see how I put my hands and what I was doing ... and when he played Hawaiian guitar, I would try to see what he was doing. It was funny."

Galban, who not surprisingly declares himself "a Duane Eddy fanatic," says he and Cooder, "were in tune pretty quickly, pretty easily. Besides, he's an intelligent guy. We worked hard but it wasn't a lot of work, if you know what I mean. Cuban music is not easy to play, but el senor Ry Cooder picked up things quickly." (Cooder has called Galban admiringly a musician "drawn to experimentation ... completely original and unique"--and also "wildly particular and fussy.")

Singer Ferrer, the man with the most improbable of all the improbable stories of Buena Vista, concurs. He recently completed a new

Nonesuch album with Cooder as producer (Buenos Hermanos), his second under his own name—after never having an album as a leader and actually being in retirement at the time of the Buena Vista sessions.

"Look chico, if you can't work with Ry Cooder, you can't work with anybody," Ferrer says over the phone. "He has his things like anybody, you just have to know how to get to him, that's all. But let me tell you, I hear Ry Cooder recording, close my eyes and I think he's Cuban. He has immersed himself so much in our stuff. I don't know if I could have done the same thing if things were reversed."

Cooder has made a remarkable career out of following his instincts into other people's cultures, zigzagging between blues and Hawaiian music, Norteno and African music, rock & roll, gospel and Middle Eastern music. Along the way, he has collaborated with talents as disparate as Taj Mahal, Earl "Fatha" Hines, Flaco Jimenez, the Rolling Stones, Joseph Spence, Randy Newman and Gabby Pahinui.

It was a path that led to the artistic and commercial success of Buena Vista Social Club. "It's not possible to just walk into something like this," he said back then. "This is not something you can go out and learn in college or get a subscription to. You need to go out and discover it. The experiences with Gabby Pahinui and Joseph Spence and people like that bring you to an awareness where you can actually work with these people intelligently and for a good end. So I kept finding signposts along the way and finally I ended up surrounded by these guys in Havana."

Still, it took Cooder six years to do a follow-up. Some of it might have been Cooder's choice. What happened in those sessions was "not something you can manufacture," he said. But then there was also the response of the United States government to the Buena Vista project. Cooder was found in violation of the embargo to Cuba and fined \$100,000, which was later dropped to \$25,000. He was also told that he would face fines and arrest if he were to return to work in Cuba.

Like many, Cooder thought cultural products were covered by the Berman Amendment and exempt from the embargo. "That's what I thought, but no. Not exactly," says Cooder, gingerly. "It's complicated. The embargo is comprehensive and specific, so if you want to do this type of production and you want to make product like this and create something with Cubans you need certain legal entitlements. So I had to get permission to go and make these two records. I had to get some sort of license granted by the U.S. government."

After two years of negotiations at the highest level—the names of Congressman Howard Berman and Senators Barbara Boxer and Dianne Feinstein are conspicuous in the thank you notes of Mambo Sinuendo—the result was a one-year exemption granted by President Clinton in his last days in office.

In an interview with the Toronto Globe And Mail early this year, Cooder still sounded dumbfounded by the experience. "You never saw one of these documents before," says Cooder, still struck by the official letter he received from Treasury. "They hadn't done one of these. In 40 years of the embargo, it hadn't been done."

Cooder returned to Cuba in 2001 and his work during that year produced Mambo Sinuendo and Ferrer's Buenos Hermanos. Mambo Sinuendo is a peculiar hybrid. Cooder has called it "ultra high-grade jukebox music" and described the whole project as re-creating a sound that never was but could have been played by a band that never was. In fact, at times it's hard to tell if Cooder is reinterpreting '50s pop and rock with a Cuban sensibility, revisiting Cuban music with an American rocker's esthetic, making a period piece or all of the above.

What is clear in Mambo Sinuendo is that the songs, the playing and the sound are all of one piece. The core group comprises two drums, percussion, acoustic bass and two electric guitars. Cooder wanted to keep a sextet format, typical in Cuban music, but modified, "because if you rely on the usual section--congas, clave, bongo, etc.--the music would tend to feel and sound the same no matter what the melody instrument is playing. It's an idiomatic reference that's pretty strict. So the best way to change that within the idea of a small group was to change the drumming quite a bit."

As a result, in Mambo Sinuendo the twang meets the Cuban groove at unexpected angles. The set includes classics—such as Ignacio Pineiro's "Echale Salsita," Damaso Perez Prado's "Patricia" and Simon Diaz's "Caballo Viejo"—but also originals such as the engaging "Los Twangueros."

"That one happened in the studio," Galban recalls. "They brought in some bata (hourglass drums used in Afro-Cuban religious music)

players and they started playing this 6/8 groove. I turned to Ry and through the interpreter I told him, 'I don't know what to play here.' And he said, 'Neither do I.' Eventually someone played a chord, someone responded, and the whole thing takes off. That was all improvised."

It wasn't the only impromptu track in the disc. "Bolero Sonambulo" developed right out of Galban relaxing at the piano. "Before playing with Los Zafros, I played piano in a dance band with saxophones and what not. I'm not a great piano player but I play it with great feeling," Galban says. "Now, we played country dances and sometimes there was no piano, so in those instances I played acoustic guitar. That's how I got involved with the guitar.

"At one of the sessions [for Mambo Sinuendo] the piano tuner did not show up and there was a tuning wrench there. I'm a tuner so I started to go over the tuning. And when I finished, I started to play a melody, something just to try it out, but because I closed my eyes I didn't realize Ry had come in and taken the guitar, and then Cachaito took the bass, Anga the congas, the drummers came in, and suddenly we were playing something so pretty--but I didn't know we were recording it. I was just trying the piano. When I opened my eyes I saw Ry playing with his eyes closed. That's why we called it 'Bolero Sonambulo,' because we were like floating. You can't plan that."

Throughout the disc, the playing is clean, deceptively simple and direct to the point of sounding almost willfully naive, loose but precise. And the sound, a warm, spacious, echoey sound, has a sepia-toned, old-fashioned feel to it.

"We worked hard at it," says Cooder, who also recorded part of the album at Capitol Studios in Hollywood. "There is no digital signal processing here, it's all done with equipment from the time. I'll give you one example. We were at Capitol Studios where there's an older studio in which a lot of the stuff was done by Dean Martin, Frank Sinatra, Peggy Lee--the records had this sound. So I opened a book, and saw a picture of Speedy West, a great pedal steel guitar player, at a session at Capitol in the '50s. They had a microphone in front of the bass, this weird microphone, and I said to one of the engineer assistants, 'Look at this microphone, this is Capitol, this is from the time.' He said, 'I know where that microphone is.' He went to an equipment room, looked for awhile and brought it out. The same microphone, this weird Altec birdcage microphone. We put it in front of a bass speaker and we sent Cachaito Lopez's bass through the speaker just to take it back through that microphone and see how it would sound.

"We avoided all the methods that are in vogue now because these are things I don't care for," Cooder continues. "They shrink the sound. It has nothing to do with this music and I believe that if you make it sound right, people get a certain emotional response to it. They might not know or care about microphones, but if you do a good job they would hear it, feel it and would understand it. That's for me the whole point of making records like this."

But then Cooder suggests that Mambo Sinuendo, and his work in Cuba all these years, is part of a larger, deeper process. When told that some of his old fans lament the loss of the "Cooder sound" and what they see as his backing away into a sort of anonymity in these projects, he is philosophical. "I'm not sure what they might mean by a 'Cooder sound.' I played on these records so I know I'm there," he says, wryly. "But, of course, every record you do has a nature of its own and hopefully that's a nature you address."

He pauses and then continues. "I'm a far better player now than I was when we started the Buena Vista Social Club sessions down there," he says. "To say the whole experience has improved my playing is not even beginning to touch on it. It's done a lot for me. I always thought the job was not to repeat yourself or stamp [all your work] with a trademark but to become more effective as a communicator. Or as jazz musicians used to say, better at how you tell your story. This is what we learn to do as we get older if we keep trying: You learn how to transmit something."

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