ROBERT MUNDHEIM

LLOYD CUTLER†

I have known Bob Mundheim for thirty years. I tried to recruit him into our law firm at least twice. We have served together on the Council of the American Law Institute and have rarely disagreed. But I came to value him most during the last fifteen months of the Carter Administration, when he was General Counsel of the Treasury Department and I was Counsel to the President.

About a month after I went to work for President Carter, our hostages were seized at the United States Embassy in Teheran. Six weeks later, Soviet forces invaded Afghanistan. For the balance of President Carter's term, Bob and I spent most of our time on the legal and economic countermeasures taken to deal with these twin crises. We worked together on the freeze of Iranian assets in November 1979, the grain and other economic boycotts imposed on the Soviet Union in January 1980, and the partly successful effort to persuade the United States Olympic team and those of other nations not to take part in the 1980 Summer Olympic Games in Moscow.

But our closest collaboration of all was in the December 1980-January 1981 negotiations to unthaw the Iranian asset freeze in return for the simultaneous release of all our hostages.

To accomplish that Herculean task, President Carter selected a small team headed by Deputy Secretary of State Warren Christopher and including Bob and me. Because of the time pressures created by the rapidly approaching transfer of power to President-elect Reagan, we had the rare privilege of bypassing the usual bureaucratic checks and balances. So that we could reach decisions and act on them in time to be relevant, the President had us report directly to him. He wanted players willing to make up their minds and stick out their necks. Bob Mundheim fit that bill to perfection.

When we embarked on this project, I thought the odds against succeeding were at least ten to one. On the night of January 19-20, just a few hours before President Reagan was to take the oath of office, I thought the odds against us were still at least three to one. That we overcame these odds was due in large part to Bob's unique skills as a financial lawyer.

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Consider the complexities of our task. We were negotiating the return of some twelve billion dollars of Iranian deposits in the domestic and foreign branches of some sixteen major United States commercial banks, and of Iran's deposits of cash, gold bars, and United States government securities with the Federal Reserve Bank of New York. Because of the turmoil of their revolution, the Iranians did not have records showing the amount of their net principal balances with each bank, and had not agreed with the banks on the interest rates to be accrued after the date of the freeze. The transaction had to be accomplished with the cooperation of four central banks (the Federal Reserve, the Bank of England, the Algerian Central Bank, and Iran's Bank Markazi). The transfers had to be coordinated so as to coincide with the simultaneous release of all our hostages and their safe departure from Iranian territory and airspace.

Moreover, since no Iranian official would deal face-to-face with any American official, we had to negotiate all of this through the Algerians, whom the Iranians selected as their intermediaries. As a result, we had to explain our American legal and technical problems in French to Algerians brought up under the Napoleonic Code, and they in turn had to explain Farsi to Iranians accustomed to Islamic law and with little experience in complex transactions. The whole process had to be repeated in reverse when the Iranians needed to explain their positions to us. To reduce the transmission time of this cumbersome process, Warren Christopher moved to Algeria for the final ten days of the negotiations.

By the time the final negotiations began, Bob had left the Treasury, but his skills were so essential that Deputy Treasury Secretary Robert Carswell drafted him back from private life. His main assignment was to deal with the four central banks, and to be the financial lawyer on Christopher's team in Algiers. With Bob's critical help, we arranged for the Bank of England to serve as the Escrow Agent for the United States and for the Algerian Central Bank to serve as Escrow Agent for Iran. Since there was not time to make a physical transfer of the gold or the United States government securities, we arranged for the Federal Reserve to transfer its gold bars and securities from the name of the Bank Markazi to the Bank of England, without physically moving the gold bars or securities from New York to London, and for the Bank of England to put an equivalent amount of its own gold bars and United States government securities in the name of the Algerian Central Bank of the benefit of the Bank Markazi. We arranged for the bank deposits to be electronically transferred from the commercial banks to the Federal Reserve Bank of New York and from the New York Fed to the Bank of England for the benefit of the Algerian Central Bank.

When the moment for transfer came during the night of January 19-20, all of these mechanical transactions were smoothly accomplished. But in the course of the night, we endured all the Perils of Pauline. Unlike the practice in other huge financial transactions, we had no time to rehearse the mechanics of an actual closing, and we had to improvise as we went along. For example:

* The Federal Reserve Bank of New York did not have enough cash to transfer to the Bank of England, and it had to arrange for a midnight infusion of cash from the Federal Reserve Bank of Minneapolis.

* The standard full and complete release drafted by the United States bank lawyers was unacceptable to the Bank Markazi, because the Bank Markazi did not know whether the deposit, interest, and loan set-off calculations used by the United States banks were accurate, and would not take their numbers on trust. On the night of January 19, the Iranian Prime Minister denounced the American bank lawyers over the radio for trying to trick Iran into signing away its right to challenge the banks' figures. We had to make a go-no-go decision on what form of a more open-ended release both the Iranians and the bank lawyers would swallow. If we guessed wrong, there was no time to try something different. With the help of Bob and the Bank Markazi's British solicitor, we worked out a draft that both sides accepted.

* When the redrafted Iranian release and transfer instruction finally came over the telex from Teheran to London, it began with the wrong signature code number for the Bank Markazi, and it then proceeded to make wild errors in the net balance for some of the American banks. Although the correct signature code appeared at the end of the message, the bank lawyers were reluctant to authorize the transfers until the wrong net balance figures were corrected. There was no time to request and wait for a corrective long telex, and there was no assurance that a "corrected" telex would itself be free of errors. With the encouragement of a wholly unauthorized "order" given on Bob Carswell's and my advice by the Secretary of the Treasury, the bank lawyers cast their normal caution aside and did their patriotic duty.

* Later that same night, Ernie Patrikis, the New York Fed's lawyer on the Christopher team in Algiers, could not reach agreement on all the technical terms of the escrow arrangement between

the Fed and the Algerian Central Bank. In Ernie's view, the Algerian draft left the Fed unduly exposed under certain contingencies, with a downside risk running into the billions. Ernie called Tony Solomon, the New York Fed's President, through the open lines maintained by the State Department's Operations Center. The Center's duty officer monitored the call, and telephoned me in the Oval Office to report it was going badly. He offered to patch me in, and President Carter decided to get on the phone as well. Ernie was holding fast, but the President and I persuaded Tony Solomon that other terms of the overall agreement adequately covered the risks, and Tony instructed Ernie to go along. If we had not persuaded Tony, we would have faced the ultimate question of whether the President can give orders to the Fed.

* The final agonizing countdown in Algiers began about four A.M. Washington time on Inauguration Day. Before the Algerian Central Bank could certify to Teheran that the quid pro quo for releasing our hostages had been performed to the letter, officials of the Bank of England and the Algerian Central Bank had to bean-count all of the bank balances, gold bars, cash, and United States securities that were being moved through their escrow accounts. They took four hours to perform this bookkeeping task. About 6 A.M. President Carter got so impatient that he tried to telephone Margaret Thatcher to seek her intervention, but he could not get through. At last, shortly after 8 A.M. on January 20, the certification was flashed from Algiers to Teheran.

* One final ironic note. Except for occasional catnaps, none of us in Washington or Algiers, including President Carter, had been to bed for forty-eight hours. At President Carter's instruction, I telephoned Blair House at 8:15 A.M. so that he could tell President-elect Reagan that the deal was done. But I was told that the Governor was still asleep and could not be awakened. (Before taking office, the President-elect and his staff had disdained negotiating for the hostages' return. After he took over, however, President Reagan's Administration came to support the final deal and vigorously conducted its successful defense before the Supreme Court.)

Bob Mundheim has recorded many achievements during his brilliant career, and he will score many more before he hangs up his tennis shoes. But to me his finest moments were as part of the team that negotiated the return of our Iranian hostages on honorable and advantageous terms in the most complex, delicate, and exciting financial transactions of modern times.